

6-6-2007

State v. Ellington Clerk's Record v. 2 Dckt. 33843

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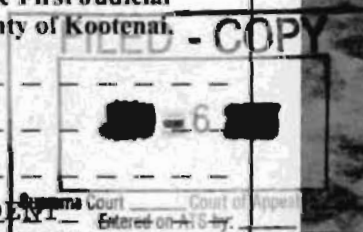
LAW CLERK VOL. II
Vol. 2 of 7
**IN THE SUPREME COURT OF THE
STATE OF IDAHO**

STATE OF IDAHO -----
PLAINTIFF/RESPONDENT -----
VS -----
JONATHAN W. ELLINGTON -----
DEFENDANT/APPELLANT -----

TRANSCRIPT ON APPEAL
Appeal from the District Court of the First Judicial
District of Idaho, in and for the County of Kootenai.

LAWRENCE WASDEN -----
Attorneys for RESPONDENT -----

MOLLY HUSKEY -----
Attorneys for APPELLANT -----



33843

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Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2006 AUG 17 PM 3:59

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497
Fel

MOTION TO COMPEL DISCOVERY

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender, and pursuant to Idaho Criminal Rule 16(e)(2) hereby moves the Court to order the State to comply with Defendant's Request for Discovery filed herein on or about February 2, 2006, and further moves the Court for sanctions. Specific discoverable items being requested are as follows:

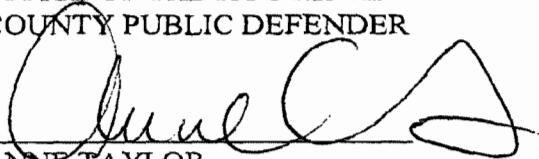
1. Tape(s) of Det. Maskell's contact(s) with Jonathan W. Ellington.
2. Tape(s) of Tim Johnson's contact(s) with Jonathan W. Ellington
3. Tape of Det. Maskell's interview with Heather McCord.
4. Reports and C.V. of "expert" Sean Daly. Preliminary Hearing Transcript on February 10th, 15th & 16th; page 557; line 24 said "could write report."
5. Reports and C.V. of "expert" Fred Rice.

Counsel believes reconstruction work may contain exculpatory information.

DATED this 17 day of August, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 17th day of August, 2006, addressed to:

Kootenai County Prosecutor (by fax)



State of Idaho

vs.

Jonathan Ellington

Case #

Charge(s)

Date

Time

Courtroom #

Tape #

Judge

Court Reporter

Type of Proceeding

Counsel

Party

Plaintiff

Defendant

Del Verhagen

For

Ann Taylor

For

For

For

Identifier

Phase of Case

28700 with case

OK waived appearance of Del Verhagen
in testimony report of 2.1.18 Del Verhagen
in testimony report of 2.1.18 Del Verhagen
in testimony report of 2.1.18 Del Verhagen
in testimony report of 2.1.18 Del Verhagen

OK Only opinion extensive @ P.H. - Doc -
don't know his opinion - assume it's
same as Del - provided phone # to
defense. Substantive review

OK we're entitled to know his opinion -
He didn't say anything different (than
Del) to me but (had) not reviewed
it yet, etc (at least 3-4 days for
State's case - it's not a substantive

Pg. 1

Identifier	Phase of Case
3288	writes of disclosures that info is similar to true data - if we find it deviates great we may need to revisit

REQUEST FOR CAMERAS IN THE COURTROOM

To: Judge John P Luster, Fax # (208) 446-1119

STATE OF IDAHO
COUNTY OF KOOTENAI
CLERK OF DISTRICT COURT
DEPUTY

The undersigned requests permission to use cameras in your courtroom in

Idaho v. John Wade Ellington
Kootenai County Case No. CR2006-1497

Courtroom No. 1 on Date: Aug. 22, 2006 at 9:00 a.m.

Media to be used: still camera; x video camera; x audio equipment

I certify that I have read the Idaho Supreme Court Order that authorizes cameras in the courtroom. I further certify that as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team. I and they agree to comply in all respects with the Supreme Court's Order and rules, with any special conditions stated by the trial judge and with any pool coverage plan approved by the trial judge.

Dated: 8/15/06 News Agency: Court TV

Printed Name: Alicyn Hanford Signature: Alicyn Hanford

Telephone No.: (212) 973-8920 Fax No. (212) 973-6793

COURT AUTHORIZATION

☐ DENIED.

☒ GRANTED UNDER THE FOLLOWING CONDITIONS:

1. Comply with the Supreme Court Guidelines
2. No photos of children or jurors.
3. Must Pool Video with other requesting news services.
No audio of bench conferences or attorney client conferences
Must operate equipment without interference with court process

ENTERED: 8-21-06

JPL
Judge

cc: Counsel of Record

REQUEST FOR CAMERAS IN THE COURTROOM

PAGE 1

Received Aug-15-06 02:32pm

From-

To-JUDGE LUSTER

Page 02

TOTAL P.02

247

600 Third Avenue
New York, NY 10016
TEL: 212.973.2800
courttv.com



August 15, 2006

The Honorable John P. Luster
324 West Garden Avenue
Coeur D'Alene, ID 83816-9000

Re: *Idaho v. John Wade Ellington* (Case # CR2006-1497)

Judge Luster:

On behalf of Court TV -- the basic cable network which provides a window into the American system of justice -- this application is submitted for permission to televise the above proceedings currently scheduled to begin on August 22.

Court TV has equipment of a type consistent with the pertinent guidelines which is compact, stationary, and requires no enhanced lighting. Court TV is ready to cooperate in a pooling arrangement with other media entities whose applications to broadcast the proceedings may also be granted.

We would appreciate that any written objections to this request be served upon us and that we are notified of any hearing scheduled regarding Court TV's coverage of this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alicyn Hanford".

Alicyn Hanford
Associate Producer, Trial Coverage

Cc: Anne Taylor
Art Verharen

Please contact Alicyn Hanford, Associate Producer/Trial Coverage, at
212-973-8920 with your responses or questions regarding this
application.

600 Third Avenue
New York, NY 10016
TEL: 212.973.2800
courttv.com

RECEIVED
AUG 17 2006
JUDGE LUSTER

courtTV
NEWS™

August 15, 2006

The Honorable John P. Luster
324 West Garden Avenue
Coeur D'Alene, ID 83816-9000

Re: *Idaho v. John Wade Ellington* (Case # CR2006-1497)

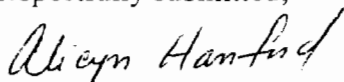
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We would appreciate that any written objections to this request be served upon us and that we are notified of any hearing scheduled regarding Court TV's coverage of this matter.

Respectfully submitted,



Alicyn Hanford
Associate Producer, Trial Coverage

Cc: Anne Taylor
Art Verharen

Please contact Alicyn Hanford, Associate Producer/Trial Coverage, at
212-973-8920 with your responses or questions regarding this
application.

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED

REQUEST FOR CAMERAS IN THE COURTROOM

To Judge John P Luster, Fax # (208) 446 1119

The undersigned requests permission to use cameras in your courtroom in

Jonathan Ellington v.

County Case No. CR 2006-000149.7

Courtroom No. on Date: 8/22/06 at 9am

Media to be used: still camera; ☒ video camera; ☒ audio equipment

I certify that I have read the Idaho Supreme Court Order that authorizes cameras in the courtroom. I further certify that as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team. I and they agree to comply in all respects with the Supreme Court's Order and rules, with any special conditions stated by the trial judge and with any pool coverage plan approved by the trial judge.

Date: 8/22/06 News Agency: ILXLV NEWS

Name: Julie Berg Signature: Julie Berg

Telephone: (509) 324-4004 Fax No. (509) 327-3932

COURT AUTHORIZATION

1. DENIED.

2. GRANTED UNDER THE FOLLOWING CONDITIONS:

1. Comply with the Supreme Court Guidelines
2. No photos of children or jurors.
3. Must rely on pooling of video feed from Court T.V. authorization. (attached).

ENTERED: 8-21-06

JPLust
Judge

cc. Counsel at Record

REQUEST FOR CAMERAS IN THE COURTROOM

To: Judge Luster, Fax # (208) 446-1188

The undersigned requests permission to use cameras in your courtroom in

State v. Ellington
Kootenai County Case No. CR-06-1497

Courtroom No. 1 on Date: 8/22-end of trial at 8:30 a.m.

Media to be used: X still camera; _____ video camera; _____ audio equipment

I certify that I have read the Idaho Supreme Court Order that authorizes cameras in the courtroom. I further certify that as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team. I and they agree to comply in all respects with the Supreme Court's Order and rules, with any special conditions stated by the trial judge and with any pool coverage plan approved by the trial judge.

Dated: 8/21/06 News Agency: Spokesman-Review

Printed Name: Taryn Brodwat Signature: Taryn A Brodwat

Telephone No.: 208-765-7121 Fax No. 208-765-7149

COURT AUTHORIZATION

? **DENIED.**

? **GRANTED UNDER THE FOLLOWING CONDITIONS:**

1. Comply with the Supreme Court Guidelines

2. No photos of children or jurors.

3. Only one ^{still} photographer operating in the courtroom
at a time. Must pool images with other news agencies.

S.R. has first priority, based upon first request

ENTERED: 8-22-06

JPLA
Judge

cc: Counsel of Record

246

STATE OF IDAHO,

Case NO.

CR06-1497

PLAINTIFF,

Date 08-22-06

9:00 AM Courtroom #1

vs

TAPE 62119

Judge Luster

JONATHAN WADE ELLINGTON,

DEFENDANT.

Court Reporter: William Rush

Jury Trial Clerk: Kathy Booth

Attorney for State: Art VerHaren

Attorney for Defendant: Ann Taylor/Brad Chapman/Christopher Schwartz

Log 0451

J Calls case

PA/DA Ready

Log 0895

J Explains jury process/timeframe to jurors.

C Swears jurors for Voir Dire

J Introduces counsel

PA Introduces self – brief statement of case

DA Introduces self, co-counsel, investigator and witnesses – brief statement of case.

J General Voir Dire – affirmative response by #20 Dykstra

#20 Dykstra – cannot keep an open mind – pretty formed opinion

J Excused for cause

#75 Welk – affirmative response

J Excused for cause

#75 Welk – affirmative response

J Excused for cause

#17 Cronnelly, #37 Hushman, #59 Reed, #15 Conrad, #14 Clark, #53 Penton, #43 Lange, #23 Felder – affirmative response

J Excuses #37 Hushman, #15 Conrad, #14Clark, #53 Penton, #43 Lange, #23 Felder0 to reschedule jury service

C Draws jurors

#77 Wilson
#30 Geraghty
#73 Wardsworth
#10 Callahan
#44 Lyle
#71 Valente
#5 Bess
#34 Hanna
#22 Erickson
#48 Middlemist
#16 Craft
#49 Nix
#47 McGee
#24 Feucht
#7 Broughton
#74 Webb
#29 Gayton
#50 Ove
#56 Primmer
#32 Graves
#19 Duffy
#76 West
#61 Robertson
#6 Robertson
#6 Boyer
#28 Gaboury
#70 Turner
#3 Baum
#69 Tervort
#60 Rhoads
#39 Jones
#35 Harrison
#45 Marlett
#54 Permen

#78 Woods
#36 Hefner
#67 Shriner

PA Voir Dire jurors – challenge #4 Beckemeyer for cause

J Granted

C Draws #58 Quade

PA Challenge #32 Graves for cause

J Voir Dire #32 Graves – excused for cause

C Draws #31 Gilbreath

PA Continues Voir Dire

Log 3452 – Tape change to Tape 62120 – Log 0001

PA Continues Voir Dire

J Recess

Log 0383

J In session – in chambers. The bailiff brought information to my attention -

Bailiff Flock Juror #74 Webb is my cousin with a hunting trip planned. Additionally juror #36 Hefner appears to speak and motion to someone who is not there and stare off into space and when he came in he acknowledged the defendant.

J Juror Feucht indicates she is suffering from anxiety attacks and asks to be questioned in private.

DA2 Motion for mistrial – the panel during the course of voir dire was totally infected by court - during voir dire the opinions stated that defendant was guilty and basis for such. Defendant cannot get a fair trial and cannot be accepted for cause. An August 2 Court of Appeals decision State v. Hauser, re: holding

PA None of the jurors went into detail about what they knew/heard. No mistrial.

DA2 Responds – Motion for jury panel outside of Kootenai County.

J I'll note your motion – cases cannot operate in a vacuum – comments – deny the motion for mistrial.

PA I think juror #61 Robertson approached me – DA3 was there– said something that I couldn't hear and I asked him "what?" He repeated it and said "you should have asked blah, blah blah" and I told him we cannot talk.

DA3 That's as I recall the conversation

J Let's bring juror Feucht into chambers for Voir Dire

Juror #24 Feucht I have anxiety attacks and have had for the last 10 years and am on prescriptions for it. These RX effect my ability to stay alert. When the attacks occur I have problems concentrating. I'm on SSI disability because of it.

PA/DA No objection to excuse for cause.

J Excused – we'll return to the courtroom. Off record.

Log 0383

J In session – during recess voir dire of juror #24 Feucht

C Draws #17 Cronnelly

J Admonishes jurors re: not communicating with counsel/parties.

PA Continues Voir Dire - challenge #49 Nix for cause

J Voir Dire #49 Nix - excuse for cause

C Draws #55 Peterson

PA Pass for cause

Log 1356

DA1 Voir Dire jurors – challenge # 17 Cronnelly for cause

J Questions #17 Cronnelly – excused

C #13 Clark

DA1 Challenge #28 Gaboury for cause

J Voir Dire #28 Gaboury - excused for cause

C Draws #51 Pace

DA1 Continues Voir Dire – challenge #58 Quade for cause

J Voir Dire #58 Quade – deny challenge – not satisfied you are not capable to continue as a juror.

DA1 Continues Voir Dire –

J Recess for lunch – return at 1:15 pm. Admonishes jury.

Log 2249

J Back in session – advised that Mr. Hanna has an issue

Juror Hanna Potential surgery next week – exam is 9:30 am Monday – not life threatening injury.

DA1 Continues Voir Dire

Log 3701 – tape change to Tape 62121 Log 0001

DA1 Continues Voir Dire – challenge #71 Valente for cause

J Voir Dire #71 Valente - deny challenge

DA1 Continues Voir Dire - no ruling on the record re: seat #4 – juror #58 Quade – ask for ruling

J No bias has been established – deny challenge – recess

Log 0910

J Back in session – juror Hanna visited with Dr. and rescheduled appointment to 4:00 pm Monday and we'll see that he gets to that appointment. I have also been advised that juror Gilbreth is on the waiting list for a knee replacement

Juror#31 Gilbreath – I'm on a waiting list –hope it's to be the first part of next month.

J PA to voir dire jurors called following challenges

PA Voir Dire – pass for cause

J Jurors not selected in original 38 are excused - (2:38 pm) – Recess to chambers for challenges.

Log 1202

J In session in chambers for challenges – off the record for challenges

J Back in session – the jury selected is as follows:

#71 Valente
#5 Bess
#22 Erickson
#16 Craft
#55 Peterson
#7 Broughton
#76 West
#51 Pace
#60 Rhoads
#39 Jones
#25 Filler
#54 Permen
#78 Woods
#67 Shriner

PA/DA Agree to the jury as selected.

DA1 Waive the reading of the Information

Def Yes, I'll waive the reading of the Information.

J Discussion re: instructions – objections noted. – Return to the Courtroom.

J Back in session – the jury seated is as follows:

#71 Valente
#5 Bess
#22 Erickson
#16 Craft
#55 Peterson
#7 Broughton
#76 West
#51 Pace
#60 Rhoads
#39 Jones
#25 Filler
#54 Permen
#78 Woods
#67 Shriner

J Explains jury schedule to jurors.

C Swears jurors for try cause.

J Instructs jury. – recess – return tomorrow at 8:30 am – admonishes jury.

Day 2 – August 23, 2006 – Tape 62122 Log 0072

J Calls case – I met with counsel in chambers and we have a few issues to address. Yesterday we had some informal discussions re: opening statements providing detailed descriptions of photographs and defense objected to the state proceeding as such in opening statements – PA indicated that this was not as he was going to proceed and the court grants the informal motion. The second motion brought by the State – apparently the Larsen family has filed a tort claim against the county and Mr. VerHaren will keep this reference out and the court has prohibited this from being discussed in opening statements.

PA/DA That's correct.

J Bailiff received a phone call from juror Broughton indicating that she was unable to proceed due to her 7 children being out of control and there was a juror who was excused making a statement as to the defense guilt or innocence of the defendant in front of other prospective jurors and items that could be seen coming in and out of the courtroom. We'll take care of these issues. Let's return juror Broughton and deal with her issues.

Juror Broughton is brought into the courtroom. – I have 7 children – they were a little overwhelmed with everything – we talked and they felt that they could continue. If it were not a hardship I'd like to be excused but if it is I'll work through it.

J Ask juror to proceed forward and work with it the best you can. If it becomes a further issue please let us know and we'll revisit it. Return the entire jury – jury present and in place. Discusses issues with jury – potential exhibits being put together either this morning or last night. If for some reason you saw items that might be part of the case they are not part of the case unless they are properly admitted. During our jury selection when we were back in chambers we have information that another prospective juror who is not here may or may not have said something re: guilt or innocence of the defendant. I would appreciate it if you would let us know now if you heard anything – no response. There has been a motion and order granting a motion to exclude witnesses – this includes opening statement. Counsel to monitor the persons coming in and out of the courtroom.

Log 0400

PA Opening statement.

Log 1282

DA1 Opening statement

Log 1745

PA Calls #1

C Swears

#1 Lisa Carrington – KCSD Patrol re: duties, training and experience. I'm a shift supervisor in a patrol car and a working unit. January 1, 2006, I went up to Scarcello Rd. to help a deputy with a call he was on. I took attempts to seal Scarcello Rd. off - explains procedure. At Scarcello and Ramsey I waited for Deputy McFarland arrive and then I went to help Deputy Klinkefus. I got the call approximately 12:40 pm.

DA2 Objection

J Overruled

#1 About 12:40 pm. I got to Scarcello Rd. within moments. I was relieved by Deputy McFarland at 12:51 and I went to the scene itself. I got there about 12:55 pm. There was an ambulance in the east lane of travel, a body perpendicular in the west lane of travel a white car partially in the ditch and a red car heading west in the east bound lane of travel. The ambulance personnel were there also. Deputy Klinkefus and an off duty officer, Dan Gregg, were there. There was a male there and two hysterical females. The male was Mr. Larsen and the two females were the daughters of the deceased. Mr. Larsen was in an agitated state and the girls were very agitated, hysterical, shocky. Efforts were made to get the three witnesses out of the area. KCSD Mattos and Wolfinger had arrived, ISP Lind had also arrived and it was determined by Mattos to take the three to Rathdrum PD for interviews and to get them out of the weather.

The weather was cold, cloudy, damp. It was not raining – the roadway was damp. I got a digital camera from Trooper Robinett and began taking photos about 1:30 pm. I took photos from various angles depicting what I had seen there that pm. **PL EX #10** – recognize **the photo** which shows the roadway of Scarcello looking west with Ms. Larsen in the center, white car, maroon car and roadway debris. **PL EX #11 photo** looking west on Scarcello Rd. shows white car and the red car further down – different angle, same area. **PL EX #12** - photo – Scarcello showing marks on the roadway.

PA Motion to admit EX #10, #11, #12

Voir Dire #1 by DA2 – I did not have a timer on the camera and looking at the report my estimation of the time of photos was about 1:30. I did not write a report but looked at someone else's report. I cannot say if any of the cars had been moved before law enforcement arrived. This is how it looked when I got there. From the time I arrived until the photos were taken the scene had not changed – no autos moved. I cannot say that the scene was kept absolutely clean from the time of the incident until the time law enforcement arrived.

DA2 No objection to Ex #11 or #12 but we need a hearing outside the presence of the jury as to EX #10

J We'll reserve ruling and argument later. **EX #11 and EX #12 are admitted**

#1 EX #13, #14, #15 – photos – describes photos – accurate photos of the scene when I took them.

PA Motion to admit EX #13, #14, #15

Voir Dire I cannot testify that this is what the scene looked like immediately after the accident.

DA2 No objection

J **Admit EX #13, #14, #15**

#1 EX #16, #17, #18 – accurate photos of scene when I took the photos.

PA Motion to admit EX #16, #17, #18

Voir Dire I was not there when the accident happened.

DA2 No objection to #18 but we do have objections to #17 and #16

J **Admit EX #18** – we'll discuss the others at a recess.

#1 EX #19, #20, #21 – accurate photos of the area at the time I took them.

PA Motion to admit EX #19, #20 and #21.

Voir Dire same question, same answer

DA2 No objection

J **#19, #20, #21 admitted**

#1 #22, #23, #24 – photos – accurate when I took them

PA Motion to admit EX #22, #23, #24

Voir Dire Same question, same answer

DA2 No objection

J **Admit EX #22, #23, #24**

#1 #25, #26, #27 – photos accurately depict area when I took them.

PA Motion to Admit EX #25, #26, #27

Voir Dire Same question, same answer

DA2 No objection to #25 – need hearing re#26 and #27

J #25 Admitted

#1 #28, #29, #30 photos accurately depict area when I took them.

PA Motion to Admit

DA We object to all 3 of these.

J We'll need a hearing.

#1 #31, #32, #33, #34 – accurate photos of the area when I took them

PA Motion to admit

DA2 Object to all of these.

J?'s#1 These photos were taken under the same conditions as DA keeps asking

#1 #35, #36, #37 – all photos accurate of the scene at the time I took them.

PA Motion to admit #35, #36, #37

DA2 Object to exhibits and the matter they are being displayed in court.

PA At this time it is best to have a ruling re: exhibits

J Jury out – admonishes jury 10:12 am.

Log 3329

J Back in session to hear objections re: exhibits.

DA2 EX #10 – shows yellow tarp on roadway with what appears to be blood coming form it. The objection is cumulative. We have several other photos showing location of the tarp. #10 with trail of blood is cumulative and prejudicial. The same argument goes to #26 through #37. Those are gruesome photographs. The admission of those photos is cumulative and more prejudicial that probative and disrespectful. This is sensationalism and offered to inflame the jury and not offered to address any material fact at issue. The statement that the lady is deceased

is admitted. I'd like to remind the court that Ms. Taylor tried to get pretrial rulings on these matters.

J Some photos are disturbing photos of the deceased and some that seem to display no such content. EX #26, #16, #27, #17 and #10 – while there may be some graphic depiction they are distinctly different than the others. (shows DA2 photos)

DA2 #26 seems to be less inflammatory than #10. As to #17, #27 and #16 our primary objection to those is that they are cumulative.

J I would agree that #16, #27 and #17 are cumulative but I'll allow and no argument **Admit #16, #17, and #27**

PA Discussion re: balance of exhibits - measurements were taken at the scene. Explains need for balance of exhibits and what they show. The jury is entitled to see the matter in which the victim died. Joel will testify that when the bronco proceeded forward it bucked up and down as it went over her and these photos show that the bronco went over her head – consistent with his testimony.

DA2 We generally have an EMT as a witness – 37 angles of this lady lying on the road. If their true motivation is to show acceleration marks and clothing they could crop those out and show that particular portion of the photograph. I don't think they'd see a particularly large amount of argument about those photos. Ask the court to exclude on all the exhibits – that kind of gore is not necessary in this case.

J The question is relevance and the question is not probative but that they re unduly prejudicial. The state has a number of elements to establish – I'm not sure they haven't established that by the unobjected to testimony of Deputy Carrington. It appears that the issue in dispute is not that he struck Ms. Larsen but why he struck Mr. Larsen. The photos may have some probative value – but the question is if they are unduly prejudicial and the majority of these photos fit into that category. The door may be opened to the admissibility of these exhibits through some testimony i.e. location of her injuries. At this time I'll deny these exhibits. #34, #32, #29, #35, most particularly #36 and #37 – will not be admitted absent some particular showing that the probative value outweighs any other concern. **EX #26 can be admitted**, #30 and #28 have been offered re: establishing marks on roadway **#28 is admitted** but EX #30 is not admitted **EX #10 admitted**. EX #31 is not admitted

PA RE: EX #35 – shows the tracks of travel of defendant and this is the best photo showing the acceleration tracks around the Honda and toward Ms. Larsen. When the reconstructionist went to the scene the hard turn marks on the scene were no longer there.

J EX #35 to remain unadmitted. Of the exhibits that were objected to #10, #28 and #26 are admitted - #16, #17, #27, #29, #30, #31, #32, #33, #34, #35, #6 and #37 are not admitted.

DA2 We object to the state's power point presentation - to do the "Hollywood thing" is not necessary.

PA I wasn't going to publish the pictures and show via slides.

DA2 Objection to the slides if the photos are going back into the jury room.

J Publishing via slides is an appropriate means.

Log 1066 – Tape 62123

J Let's run through the admitted exhibits and the video and make sure it is correct. – Video appears to be consistent with the court's ruling.

PA Due to the lighting in this courtroom I'll not be using the power point presentation and will have the witness come forward and point out items on the exhibits to the jury.

J We'll proceed in that fashion. Return the jury – jury present and in place. The court has ruled EX #20, #26 and #28 are admitted.

PA I'd like the witness to come forward to show the photos to jury.

DA Objection

J Will allow

#1 EX #10 – Scarcello looking west.

DA2 Objection

J Overruled

#1 Medic kit is also on the road. EX #11 – different angle from the scene. EX #12 Scarcello looking east showing the Honda and marks on the roadway.

DA2 Objection

J Sustained

#1 Traces roadway marks on exhibit with finger. Tracks curve around the Honda and they appear to go right to the edge of the road. The marks went out about 25' from the body.

DA2 Objection

J Overruled.

#1 The curved marks went all the way to Ms. Larsen's body. These marks were clearly visible at that time. EX #13 is from the west side of the driveway looking in a northeasterly

direction. EX #14 standing in Scarcello road looking into the drive to a private residence and marks on the roadway. This is in front of the Subaru. EX #15 looking east on Scarcello from the driveway showing positioning of autos and Ms. Larsen. EX #16 taken from the drive looking eastward on Scarcello showing marks on the gravel road, autos and Ms. Larsen. EX #17 – relates photo, EX #18 shows the marks that curve around the Honda. These are the same marks that are shown on EX #12. EX #18 shows the tracks from a different angle. The tracks were visible all the way to the edge of the road when I was there. EX #19 is a closer version of EX #18 showing damage to the Honda, marks on the roadway, gravel and angle of the Honda in the ditch. EX #20 is a closer version showing what appears to be contact damage on the Honda and tire marks in the dirt. EX #21 – is looking from the Honda Westward depicting the marks on the roadside dirt and pieces of the Honda. EX #22 is a photo looking east on Scarcello at an angle showing more damage on side of Honda, roadside marks and marks leading to Mrs. Larsen. The tracks are visible in this photo. EX #23 includes Honda damage. From the rear of the Honda the tracks are visible and curve to Ms. Larsen. EX #24 another angle of the Honda with the tire off the roadway, vehicle off the roadway and into the ditch. EX #25 – shows driver side window of the Honda – the white mark is a flash light – I was attempting to get a smear to show on film. I attempted to get the smear mark because of the reporting party's story. The head of the driver could have been in this area. EX #26 is a photo of Scarcello road on south side looking north showing Ms. Larsen in relation to the center of the roadway.

DA2 Objection

J Continue

#1 I did take some photos of Ms. Larsen uncovered.

DA2 Objection

J continue

#1 I do have those photos. Her head was in a north westerly direction. Shows position of body – feet and head – on exhibit. Ms. Larsen was lying on her back. The darkened area was a line of blood.

DA2 Objection

J Sustained

#1 The line was red and about 10' long leading from head to feet. I have seen blood before over 1000 times in the last 17 years. I am familiar with how blood looks. EX #28 is a closer version - the red substance leading from head to feet is visible. A dark spot appears to be hair. The red substance was coming from a wound in her head – the left top of the head. It was a bleeding cut. EX #27 is another view of the Honda looking northward showing damage to the Honda and marks that lead to Ms. Larsen.

I estimate that I was there about 50 minutes and Sgt. Maskell was assigned as investigating officer. Officers present when I left (lists)

XE#1 There were medics there also. From the time of the accident to the time I left I don't know how many cars drove through the scene. Deputy Klinkefus's car has a video and I watched it. I saw an ambulance in the video but no civilian autos drive through the scene. It took me about 15 minutes to get to the scene, 10 to get to the perimeter. I saw the two Larsen girls when I got there. My auto does not have a video. Law Enforcement officers were walking through the scene and were still walking through the scene when I left. The Larsens were at the scene when I got there but not when I began photographing. I was asked to secure the perimeter

I have a supervisory POST certificate. When practical it is important to maintain a log of who comes and goes from a scene. It was not practical in this scene. As far as I know only medical and law enforcement came and left from scene. The scene was secured at the perimeter. This is the duty of the primary response officer until he is relieved. This was an active scene – we were looking for a fleeing suspect. The medics were already there when I got there. There are numerous law enforcement officers autos there. I didn't make a note when they arrived or what route they took to get to the scene. I didn't have molds taken of any of the tire prints so I could compare. I was aware that a weapon had been fired. When I arrived the weapon was secured in Deputy Klinkefus's vehicle – I know this because he told me. I took the photos between 1:30 and 1:40 and the light was waning – it was January 1st and it was cloudy. I don't know what type of camera the Trooper handed me. To my knowledge none of the photos were cropped at all. I removed the disc they were on and gave it to Lt. Edmonson that day. That was the last I saw of the disc. I walked around and took the photos – I was wearing my patrol boots.

RD None

J Excused

PA Calls #2

C Swears

#2 Sgt. Brad R. Maskell – KCSD Major Crimes Detective – re: duties, training and experience. Explains POST certification. I have the advanced and supervisor POST certificates. I have investigated 300-400 death investigations over the years and a number of those were a homicide investigation. Right away I want to get a feel for the type of death. I basically try to figure out how someone died. On January 1, 2006 I got a call to Scarcello road. I was off duty with wife and family and loading a load from storage unit – we were moving that day. I got a call from Edmonds. I told here I'd be a while but at some point I accomplished arriving to the vehicle. While on my way to the scene I overheard radio conversations indicating that they had located the suspect at a residence on Scarcello road east of the accident scene. I went to the Cunningham residence on Scarcello road about 2:15 pm. Describes the residence, out buildings and roads. At some point I went to the scene – the Cunningham residence to the scene is $\frac{3}{4}$ of a mile. I drove this with my vehicle and clocked it with my odometer. I was able to get up in a helicopter to get an arial photo of the area. I got numerous photos.

EX #3 – photo Scarcello road and includes the area where the Cunningham home is. I believe I took the photo on the 4th of January. **EX #4 is another photo taken from the air.** **EX #5 is almostly a direct overhead shot of where the incident took place.** **EX #6 – closer view west looking southeast.** **EX #7 – image I took of the Cunningham home.** These are accurate photos.

PA Motion to Admit EX #3 - #7

DA2 No objection

J Admit EX #3 - #7

#2 EX #8 is an image from KC GIS satellite mapping system. The road marked Ramsey road is not Ramsey (marks out Ramsey road on map) I have included the words Crime Scene area and date and time on it and words by the Cunningham home indicating that the defendant was found there and by whom. I obtained the times from the radio log. There is nothing to indicate to me that the times are different than the 911 log times. **EX #9 is another map – Google map showing relationship of the scene to Highway 41.** **EX #2 – another map from KC GIS system.** The incident location is marked with an arrow.

#2 EX #2, #3, #8 and #9 are accurate exhibits.

PA Motion to admit the exhibits.

J EX#3 was already admitted.

DA2 No objection to #2 or #9

J #2 and #9 are admitted – we'll discuss #8 after lunch. Recess – admonishes jury – return at 1:15 pm

Log 0402 – Tape 62124

J Back in session

DA2 EX #8 has information that has not been established by the evidence. Editorializing I refer to the editing re: crime scene and no direct testimony re: information indicated where defendant was located and with #9 it seems cumulative.

PA #9 does not have the Cunningham residence on it. As to the language on it this officer has testified to the information contained. I can simply wait for a few more witnesses if the court is not inclined to allow it at this time.

DA2 The assertion that it is the Cunningham residence is testimonial in nature.

J It is up to the jury to decide if it is a crime scene. The exhibit itself re: ariel photo – foundation is appropriate however I am concerned re; confrontational issue re: defendant found at the Cunningham home and this portion should not be admitted at this time. Return the jury – jury present and in place.

Log 0650

#2 As I pulled to a stop in the Cunningham drive I could look out toward the residence and tucked in behind a shed I saw a small portion of the left rear corner of the blazer. I exited my vehicle and approached the residence. ISP Longo, Tim Johnson and March were there. At some time I viewed the blazer. I could see it had no license plate at all. I could not see if it had a temporary or not – it was very dirty. I am told it had a temporary. I could see on the lower rocker panel below the driver door there was some new damage there – denting in along the side of the blazer with some rub marks that contained some maroon paint chips and paint transfer. Toward the front of the vehicle the front left had some recent damage where it was dented in at the front left corner. One of the bumper guards one had been pretty much torn off and was hanging low. There was quite a large piece of white paint chip laying on the bumper. In the rear window of the passenger side I could see some damage and the window shattered. It appeared that it had been hit by a projectile – consistent with a bullet. The bullet had glanced off the vehicle. The front quarter panel of the passenger side, above the wheel well there was another projectile hole that I recognize to be very consistent with a bullet hole. This was just above the wheel well and pretty much perpendicular in toward the wheel well. I caused some photos to be taken. I directed Sgt. March to take photos of the vehicle and to collect the large piece of paint from the bumper. By the time we were taking photos it was about 2:20 or 2:30. EX #62 – photo taken in Cunningham driveway that enters from the east directly behind the ISP and Detective March's vehicle. #63 – photo orienting the camera slightly to the west showing Cunningham trailer. #64 closer photo depicting rear of blazer. #65 closer photo moving toward shed showing blazer. #66 still closer photo. #67 photo showing rear end of the blazer. #68 photo – drivers side. #69 photo of rocker panel – drivers side. #70 – photo looking at left front quarter panel of the blazer. #71 close-up of the blazer showing paint chip on bumper. #72 – photo showing the passenger side of the blazer. #73 photo of the front passenger side of the vehicle. #74 close-up of the projectile hole. #75 close-up of the front bumper of the vehicle. #76 close up of vehicle showing paint chip. #77 photo of the front left corner (close up). #78 photo of marks on the underside of bumper front left side, #79 photo bumper guard front left side. #80 photo rear passenger side of blazer. #81 photo of front passenger side projectile damage.

PA Motion to admit #62 - #81.

DA objection to 76, 63, 65, 72 and 79 as cumulative – no objection to the balance of exhibits.

J Exhibits 62, 64, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 80, 81 are admitted. Side bar to discuss balance of exhibits. Record should reflect that I have examined the exhibits and while there are some cumulative I see no problem in admitting the exhibits - #63, 65, 72, 76 and 79 are likewise admitted.

#2 At some point my attention was drawn to person in back of patrol car – it was Mr. Ellington – identifies defendant in the courtroom. I attempted to interview him.

Side Bar

J Excuses jury to jury room – admonishes jury. (1:55 pm)

Log 1348

DA2 The record should reflect that the witness identified Mr. Ellington without objection as the person in the back of the patrol car – the next question was if he interviewed him and the answer was that he attempted to. The court will remember that by that time Mr. Ellington had invoked his right to counsel. What we are faced with here is a due process violation as outlined by *Doyle v. Ohio*. Motion for mistrial.

PA I didn't ask the question if he attempted to interview him. I asked a leading question to skirt around the entire issue. The response does not give the inference that he invoked his right to counsel.

Court reporter reads back question

DA2 The bell has been rung and I cannot un-ring it. Cannot allow this trial to continue in good conscience. I ask the court to declare a mistrial at the instigation of the state.

J Recess

Log 1723

J In session in chambers for continuation of the motion for mistrial – counsel only present.

DA1 Waive the appearance of the defendant for this motion. I had a conversation with PA last week and PA asked if I would elicit from Maskell a conversation with the defendant wherein the defendant said that he had been shot at and why was he being arrested. I indicated that I would not and he said that if I did he'd bring out that he'd "Lawyered up". I said "no you won't." My concerns are that this was a set-up.

PA I am familiar with the case law and talk regarding invoking rights leading to a mistrial and I have no grounds to do this trial again. We talked about not bring up his invoking his rights – the officer told me he did not understand my question

DA2 How can I respond to "attempted to" – was he too drunk? All I know is that I am left with a situation – what kind of question is left in the mind of the jury. Were hamstrung from this day forward. What are they going to think? We're stuck in the very same situation that Doyle was.

Log 1723

J Counsel to return to the courtroom.

J Back in session – the court reviewed the law re: mistrial – 5th amendment issues. Rule 29.1 mistrial motion. RE: *Doyle v. Ohio*, 114 Idaho 133. There is no evidence that Miranda was provided to the defendant and no evidence that the defendant never followed through or that someone else was to have done it and didn't. I cannot jump to the quantum leap that the jury will assume that the defendant invoked his right to remain silent. I am not satisfied that this leave the defendant where he cannot get a fair trial. It is up to the defense if they wish to have the jury instructed to disregard the statement. Mistrial denied.

PA No questions

DA2 What could we say to the jury that would do nothing more than compound the error.

J I agree and we'll move on. That is my standard practice absent a motion. Return the jury – jury present and in place. (2:47 pm)

Log 2191

#2 I went to Ron Cunningham's trailer within ½ hour of my getting there.

DA2 Objection

J Will allow

#2 I had an opportunity to look inside the trailer.

DA2 Objection

PA Responds

J Comments

DA2 Objection (2)

J Sustained/Overruled

#2 The TV was in the middle of the trailer and I recall that there were some alcohol containers in the trailer.

DA2 Objection

J Will allow

#2 I don't recall specific brands of alcohol – I think I recall one Zima and some cans. I had the blazer towed and sealed with tape. I directed the blazer on a roll bed and taken to our secure area. I spoke with both of the Cunninghams and then went to the death scene. I arrived there approximately 3:10 pm. When I arrived from the east side - I saw Edmondson, Klinkefus, 2 ISP Officers, Wolfinger. There was a Honda and Subaru there and the body of Ms. Larsen there also. Honda on the North side of the roadway somewhat off the roadway facing NE and behind that to the SE was the body in the west bound lane of travel and further on into the scene there was a maroon Subaru west bound in the east bound lane slightly facing the NW. When I arrived it was cloudy and starting to have a very light sprinkle of rain. I removed the tarp covering the body to see the condition of the body and make note of the injuries. As an investigator it is my practice to view the body without anything covering it. You have to look at it to determine what happened. It is not possible or a fact finder to determine what happened without looking at the body.

I have had specific training re: blood stain/spatter analysis. I have run into blood stain/smear evidence on the job many times. I noticed blood smears – EX #35 –

DA2 Objection – this exhibit has not been admitted

J Don't describe the contents in detail just in general.

#2 The photo shows her body in the road in the same position as when I got there. The position of the body in relation to the blood tells me information. The red shirt is significant to my investigation as it is significant with red material obtained from forensics.

DA2 Objection

J Disregard the testimony re: forensics.

#2 I am familiar with various pieces of evidence found underneath the blazer.

DA2 Objection – leading

J Sustained

DA2 Objection

J Overruled and I'll allow you to continue

#2 I have seen the photos showing the body covered with the tarp. It is important in this photo to see the blood smears on the road that can be seen from this photo.

PA Motion to admit

DA2 Objection

J Sustained

#2 I did see some hair.

DA2 Objection

J Overruled

#2 There was a small clump of hair in the blood smear. The hair was near her heel. I took the hair into evidence marked as **EX #162 – the clump of hair** removed from the smear pattern.

DA2 Ask the court for a continuing objection

J Noted - no scientific testing only this witness's opinion that that is what it is. EX #29 – photo of body of Vonette Larsen.

DA2 Objection

J Re: prior ruling.

#2 This photo accurately depicts where the hair is in relation to her body. The photos showing body covered with the tarp don't show the hair - covered by tarp.

Log 3154

Voir Dire I arrived at the scene about 3:10 pm – I cannot say that this scene remained the scene from the time it occurred to the time that I arrived.

DA2 Objection.

J Overruled

#2 **EX #29 is an accurate photo** of the hair I have with me as EX #162.

PA Motion to admit EX #162 and EX #29

DA2 Objection

J Sustained

#2 I took more photos when I was there because I wanted to get additional photos of the scene as it was when I arrived and to document some of the accident reconstruction. I took photos somewhere in the area of 3:30. There were 2 ISP officers there. **EX #47** shows the orange paint markings in the roadway placed by ISP during reconstruction. **EX #48 is a photo** of another angle as it relates to the intersection. **#49 – photo showing Subaru. #50 another**

view of Subaru from another angle. **#51, #52 photos** showing ISP markings in the roadway. **#53** is a view of Scarcello road that I took from the west to the east showing some of the reconstruction effort. **#54** – another view – a little to the west of the Honda showing damage and debris and ISP markings. **#55 – photo** – closer of the Honda on the side of the roadway. **#56 – photo** – view of opposite side of Honda – door open – you can see two witness statements hanging out of the doorway of the Honda. **EX #57** is a closer view of the Honda – passenger side. **EX #58** – clear close up photos of the 2 witness statements partially out of the vehicle. **EX #59** view of the passenger side of the Subaru – **EX #60** close up view of the Subaru showing front corner. **EX #61** is a close up view of the upper chest and head of Ms. Vonette Larsen – this depicts some of the pattern injuries I saw at the scene. I took the photos because of the pattern marks on the body so they could be identified as to the scene. I took the photos all about 3:30 – 3:45.

PA Motion to admit EX #47 - #61

DA2 No objection except as to #61.

J Sustain objection as to #61 at this time – balance of **#47 - #60 are admitted.**

#2 I have the witness statements with me – marked as **#150 and #153** – these are in the same condition as when I saw them at the scene. I directed that both cars be transported from the scene -sealed and brought to our evidence impound yard. I left at 5:00 pm and the cars had not been transported yet. I directed the funeral home to place Ms. Larsen in a body bag and seal the bag. In the next few days I spoke with 6 or 7 persons and at one point I took finger prints and palm prints from Vonette Larsen. I took those prints at the funeral home. I did this to compare prints left on the vehicle. I took prints and hair and provided them to the State. At some point I was advised that they wanted another set of prints from Ms. Larsen. I made the decision to not provide more prints to the lab. **EX #161 – 2 page document – lab report**

DA2 Objection

PA There was a stipulation re: admission of this exhibit so I don't know why there is an objection.

DA2 Unaware that there was a stipulation. (speaks to DA1) We did agree to admission of the exhibit but not reading it into the record.

PA Offers EX #161

DA2 No objection

J **Admit EX #161**

#2 #161 is a lab report from state police. I contacted the 911 center and wanted to determine if there was a better quality recording of the 911 call. I contacted the supervisor and confirmed that they could provide a better quality

DA2 Objection

#2 I did get a digital analysis and submitted it to Remin which is a company that provides analytical analysis for police departments.

DA2 Objection

J Overruled

#2 I wanted to determine if there were gun shots audible on the tape, where they were if they were there and how many if they were there. #164 is the white paint chip recovered from the blazer at the Cunningham residence – it is in the same condition.

PA Motion to Admit EX #164

Voir Dire No analysis of #164 – don't know the scientific analysis

DA2 Objection – don't know what it is.

J Overruled. (#164 admitted) Recess for the evening – return at 8:30 am August 24, 2006.

Log 0922 Tape 62125

Day 3, August 24, 2006 – Tape 62125 Log 2008

J In session

PA Cannot get power point up due to lighting in courtroom – move to replace #2 with larger #2

J Granted

PA Motion to admit #162 – some confusion regarding prior ruling.

J It would seem to me that if we had a photo with feet, centerline and hair that would take care of my concerns re: graphic nature (#29). As to #162 - I cannot tell from my notes what the basis of the objection was.

DA2 There was no scientific testing to establish it was hair, skin or blood – whatever it was purported to be. We also object to having certain artifacts of the decedent into evidence. There is no legal justification to admit that – it's lacking foundation – no point – we don't know it's hair, human hair, whose human hair it is

J I cannot remember what the basis for sustaining any objection to #162 was – PA can proceed as if the objection was simply a foundation objection.

DA2 I am informed that there was an article in the press re: motion for mistrial and it go into the specifics of the ruling.

J I'll remind them every day and I'll continue to remind them and address your concerns.

DA2 Yesterday when the court was reviewing a particularly blood photo a juror was maneuvering in such a manner as to view the exhibit.

J I'll watch that. Return the jury - jury present and in place.

Side bar.

J Welcomes jury – I was provided with a letter from the jury yesterday and wanted the jury to know that both sides are well aware of your concerns (re: exhibits) and are prepared to address those issues.

#2 At Scarcello road I examined Ms. Larsen's both.

DA2 Objection

J Go ahead

#2 I examined her head and face area and saw injuries. She had severe head trauma specifically to the upper left side skull area. There was hair and tissue that had been torn off and skull fracture and there were pattern injuries on her face and neck. The pattern looked very much like pattern of pavement and there were marks on her neck. The open skull fracture was on the left side of her neck and as I recall the impressions were on the right side of her and the pavement pattern on the side. Views EX #61 – the two pressure point injuries were on the right side of her neck below the ear and the surface injuries were on her upper right forehead, cheek and jaw. The most prominent skull fracture was on the other side. I noted the color of the hair on her head. I collected hair at the scene.

DA2 Objection

J Explains ruling

#2 In my career I have collected what appears to be hair before and I believe I can identify it as such. I believe the hair I collected came from the head of the victim – it matched the hair on her head, it was in a blood smear and it appeared to be consistent with the hair missing from her head.

PA Motion to admit #162

DA2 I have stated my objection previously

J Admit #162

#2 Explains EX #2 to jury showing roads involved, incident location, Cunningham home and Bronson home. Displays/explains EX #2-7 and #9 to jurors.

Log 3441 – Tape change to Tape 62126 Log 0001

#2 Continues explaining EX #2-#7 and #9 to jurors. EX #47 - #60 displayed/examined to jurors. I saw photos taken by Carrington and saw the marks in her photographs. When I got there it had started to rain slightly and the marks were no longer visible. EX #150 and #153 were witness statements that can be seen in the white car. #61 - #63 shown/explained to jury.

XE#2 I have extensive law enforcement experience. I have no medical, engineering or physics degree. It is important that the scene be secured. I was the lead investigator in this case and I would say I have investigated it thoroughly. From the time of the incident until the time Deputy Klinkefus arrived on scene. I reviewed the Deputy's video recording and there are vehicles driving through the scene on the video and people walking through the scene. The ambulance drove through the scene. There is a truck that passes through the scene. I talked to Deputies Klinkefus and Stewart when I arrived. I had made a determination as to what had happened before I had talked to the witnesses. Depending on the circumstances of the interview it may be appropriate to ask leading questions. To ask suggestive questions would be inappropriate. Discharging a weapon will leave a residue, GSR, on a person firing that weapon. I only had GSR testing equipment as of about 1 month ago. There was no GSR testing done on Mr. or Mrs. Larsen. To my knowledge the KCSD has never done a GSR test. There is no policy against it. Today GSR testing is recognized a poor evidence. The reason it is considered poor evidence is because it is not specific enough to identify the actual shooter. It means simply that that person might have been in contact with a recently fired weapon, shook or held hands with a recently fired weapon, touched a counter where a recently fired weapon was sat, etc. I have had training in the firing of firearms and the operation of different type of firearms. I carry a firearm in the regular course of my duties. I am familiar with a 44 caliber handgun and the 44 associated with this incident. I have looked at it. A 44 caliber is a large caliber handgun. The discharge of a 44 makes a gunshot noise. It makes a louder noise than a 22 caliber handgun. I did not fire the handgun associated with this case. I have fired a 44 caliber handgun before and one that is similar to the one associated with this case. I have fired a similar model. When you fire it there is a recoil associated with it. Explains the recoil – when you fire it jerks your hand a little bit. The amount it jerks depends on the shooter. There were at least 2 bullet holes in the blazer. The actual projectiles were never recovered. I have discovered that there were 5 total shot and no projectiles were ever recovered. I don't believe that any were recovered from the blazer. From the size of the hole you cannot determine the distance from which the projectile was fired but you can determine the direction from which it was fired. Depending on the surface and circumstances you can determine from the residue left how close the weapon was fired.

PA Objection

J Sustained

There were trees in the area of the incident. No search for the projectiles. Some of the photos show the red Subaru. I cannot say that the Subaru was in the same position as when the blazer left the scene. I didn't respond Code 2 or 3 – drove normally to the scene. I drove north on 95 from the SO –re: direction of travel to scene.

DA2 Recess?

J Recess – admonishes jury.

Log 1573

J Back in session – jury still out.

PA After this witness is done I'll call Jonette Larsen and I request no mention of the torte claim.

J Mark the **Torte claim as Court's Exhibit A** (reviews exhibit).

PA Motion to exclude reference or questioning re: torte claim. It would be more prejudicial than probative.

DA1 We would like to be able to bring up the torte claim (1) statement within it and (2) motive and bias. The fact of the torte claim shows motive for chain in statements. Page 2 re: Deputy Klinkefus providing paperwork with the girls and "abandoning" them. That's not quite the way it happened. There have been changes instatements and exaggerations. This lawsuit is motive.

PA The statement that the Deputy gave the girls paperwork is true. The word "abandoned" is what the defense seems to be hung up on – without more you should exclude any reference to it.

J Comments – Torte claims in excess of \$1 mil in damages. Bias is always an issue and in this case there will be a testimony from a number of people and I suspect the three Larsens. It is appropriate to allow the defendant to make some sort of limited inquiry so long as proper foundation is made. I'll note the state's objection but I'll allow some inquiry into this area.

PA Limited to what extent?

J We'll not try the torte case but the fact that they filed the torte claim can be brought up and the statements that they advanced in the torte claim and differences that those previously given.

DA2 The court brought to our attention that the bailiff provided a note from the jury – can that be Court's 2 or B?

J I always maintain the jury questions and I advised counsel and the concern had been remedied. I'll not mark it as an exhibit but retain the question.

DA2 The concern is the wording “we” – like a collective concern – you have evidence before you that the jurors are not obeying the court’s directive in this regard. I brought up the issue of publicity to the court before and this is a red flag that this case is being discussed.

J Relates the way the question was provided to the bailiff. This doesn’t necessarily indicate they are discussing the facts just their being able to view the evidence. Additionally juror #3 was having difficulty seeing photos and so juror #3 and #10 have changed places.

XE#2

Cont. When looking into the Cunningham home I saw a Zima bottle in there. I obtained tape from the 911 center. I was unhappy with the quality of the first tape so I got it again and in digital version. This version is the one I sent to Rocky Mountain Information Network. Prior to that I made inquiry of the Motorola corporation. Motorola answered my concerns and I decided to send the tape away anyway. I was not satisfied with the letter from Motorola. It is not correct that it didn’t fit with my theory of the case.

We’ve admitted many exhibits including paint chip, hair and photos. The gun is in evidence. My investigation provided information that the gun was placed underneath the passenger seat of the Subaru. I had information that Ms. Larsen was driving the Subaru and that Mr. Larsen was in the passenger seat before the actual contact of the vehicles. I have never seen a passenger in a Subaru try and pull a gun out from under the seat.

RD#2 I put the gun under the passenger side seat of the Subaru. I was contacted by the investigator for the Public Defender’s office regarding firing of the weapon.

DA2 Objection

J We’ll discuss it at the next recess.

#2 I took the gun out of evidence and provided it to the investigators. They wanted to see if the gun would fit under the seat. I had no problem putting the gun under the seat of the Subaru.

There had been some questions as to if the gunfire was audible on the 911 tape and I was having difficulty determining what was gunfire and what was not. I sent a letter to Motorola and asked them some questions re: cell phone and if the phone would have difficulty picking up the sound of gunfire. The response I got was that the gunfire should be audible on the tape. I sent the tape in for analysis to see how many shots, and where they were in relation to the incident. To fire a bullet into open space and then to try and find the bullet is like looking for a needle in a haystack.

A hunting handgun is typically a large caliber handgun with a long barrel and the 44 that Joel Larsen had is just that.

DA2 Objection

J Sustained

Scene security can be thought of in a couple of different ways – taped off area or if area people/autos can be explained and someone can be accountable for what is taking place.

Side Bar

Log 3165

RX#2 I cannot say that the photos display the scene as it was immediately after the incident happened. I later determined that the Subaru had been moved. Looking for the projectile would not be practicable. In a charge of murder it is important to collect every bit of evidence you could.

J Witness may step down.

Log 3468 – tape change to Tape 62127 Log 0001

PA Calls #3

C Swears

#3 Joleen Ray Larsen – [REDACTED] – 18 years of age. Re: family. I lived my entire life with my mother and father. I live with my sister now in Hayden. January 2006 I was living at home with my parents in Athol. Describes Athol residence. In January of 2006 I was a student at Timberlake High School. I now work as receptionist for a real estate office.

EX #1 – photo of our family taken in December of 2005.

PA Motion to Admit EX #1

DA1 No objection

J Admit EX #1

#3 Jovone had a 1996 white Honda. December 31, 2006 I stayed at my sister's house in Hayden. We came into CDA for New Year's Eve with some friends partying. My sister's son Zack spent the night at my parent's house. We got home about 3:30 am and went to bed. We got up and left the house about 10:30 or 11:00 am. We'd had some alcohol the night before – 4-5 beers. When I woke up I wasn't feeling the effects of the alcohol. When we left we went to Super 1 and got a Sunday paper, doughnuts, juice and lottery ticket. Jovone was driving and I was in the passenger seat. I had a cell phone that I'd had for a long time. RE: direction of travel to parents home . . . followed Ramsey out.

PA1 Objection

J Sustained

#3 Coming out of the curves on Ramsey and up a hill – at the top - we noticed someone behind us. My sister asked if it looked like our neighbor – I turned around and looked and said “no”. When I turned around I saw the grill of an SUV. When I turned back around there was a car coming at us. When this car went past us the SUB pulled out very close and got in front of my sister and I. There is a stop sign at the intersection of Brunner and Ramsey. The SUV got in front of us at the stop sign and stopped. The driver got out – came back to our court and asked what the f - - - we thought we were doing, get out f - - - ing ass out of the car and let’s take care of it right now. I didn’t look to see if there was anyone else in his vehicle. He had gotten out of the drivers door. He was standing at our driver’s side door and within 2’ of the door. I could see his face – he was very mad. He was using curse words at us. He asked us to get out of the car and settle it – about 3-4 times. He was yelling at us. There were no other cars in the area but the one going the other way. When we wouldn’t get out he punched the driver’s side door. The window was very close to breaking but it didn’t. It kind of wrinkled when it was hit. We had locked the doors when he was walking back toward us.

After he punched the window I called 911. Identifies defendant as the person who was the driver of the SUV who yelled at us and punched the window. After punching the window he got back into his vehicle and drove away. We decided to follow it because there was no license plate on the vehicle. We were on the phone with 911. At some point the driver of the SUV made a quick stop. He was in the east bound lane and we were behind him. He put the vehicle in reverse and came backwards.

DA1 Objection

J Overruled

#3 He came back at us fast and he stopped within a foot or one and one-half feet of her front bumper. He took off again. Still on the phone with 911 we decided to follow him. We went past persons walking along side the road and went to Season where we turned right. His vehicle hit a snowy patch and lost control – swerving all over and then he regained control. He pulled into a turn-around and came out toward us in our lane. We were heading east. About 10’ before us he went back into his own lane and as he went past us he flipped us off and made the mouth gesture like “fuck you”. I could see the mean look on his face. We turned around as well and went back the way we came from. We was quite a ways ahead of us and we saw him take a right a Brunner and Wier. When we reached the intersection we couldn’t see him any more. Still on the phone with dispatch – we looked all over and there was nothing. We came to the conclusion that he had to have turned off somewhere between Weir and Ramsey. We drove up around the corner on Ramsey to see if we could see anything – we didn’t see anything. The 911 Dispatcher said she wanted us to wait at Brunner and Ramsey and we went back there. This was the same place that he had punched the car. We were waiting there and I called our parents and told them what happened. My parents got there first – before the Deputy. My parents were there within 15 minutes. I had not told them to come and was surprised when they arrived. My family had the Subaru for at least a year. Mom was driving and Dad was in the passenger seat. We told them what happened and that we were waiting for an officer. We told Dad the direction the SUV took.

Mom turned around and they drove off toward Weir. We could see them the whole way. While they were gone the Sheriff pulled up. When the sheriff left we could see our parents turn around.

The Deputy was there within ½ hour. We told him the story and he asked us to pull the car behind his car. He gave us statement forms and asked that we fill them out. The officer drove off taking a left which is the opposite of where we told him. We began filling out police reports and looked out and saw the SUV pull out of a drive and turn to the right coming toward us. He came past and flipped us off again, "fuck you" and drove off. As he made the turn he got within 5' of us. My parents had turned around and came back toward us. I called 911 to let them tell the officer he'd come back. This second call to 911 was 35 – 40 minutes after the first call. We followed the SUV down Ramsey. My sister and I were traveling at least 80 MPH. For the most part we were able to see the SUV – we weren't trying to keep up with it just keep eye distance. We wanted to see where he was headed to and we were waiting for the officer to come up and take care of it. We were not attempting to take care of it.

PA1 Objection

#3 Had he gone up a driveway I would have waited there and told the officer that he had gone up there. Mom and Dad had no cell phone. At Scarcello the vehicle took a right. The vehicle hit a snow bank and was backing up. My sister and I slowed down and stopped in our own lane. I was still the passenger and still on the phone with 911. My parents came up beside us and passed us in the east bound lane. They came around past us and were kitty-corner to the right side of my sister's car. I could see Mom driving and Dad in the passenger seat. They were hit by the SUV. My parents car was slowly moving forward when they were hit. The blazer kept going facing east. The next thing was the SUV coming at us head on. I just remember seeing it in front of us and hitting us. I remember hearing it accelerating. He hit us head on. In order to hit us head on he drove over the center lane. When we hit he kept going forward. When he hit us the air bags went off. There was white powder everywhere. I couldn't really see anything because of the powder in the air. There was screaming and then he hit us on the drivers side. The pushing took a matter of seconds. I couldn't see but I know that we were not going forward.

J Recess – return at 1:15 pm. Admonishes jury.

Log 1527

J Back in session – there was an objection earlier and the court reserved ruling on the motion – we'll take it up now.

DA2 There was a statement made by the State's witness while on the stand wherein the inference could be made that the defendant had to avail himself of the services of the public defender. This is impermissible and a violation of his right to counsel and the court is now faced with a multiplicity of error 1. motion for mistrial early on during voir dire, 2. Doyle error yesterday wherein the court made its ruling and today we have a third error, that being the identification of defendant's defense team as from the office of Public Defender. Renew motion and ask the court to declare a mistrial. The Court is aware of the cumulative error doctrine –

none sufficient in and of themselves but cumulatively they are sufficient. Ask the court to declare a mistrial at this time.

PA I think you should deny the motion.

J Comments – deny the motion for mistrial – admonishes PA to advise witnesses accordingly. Return the jury – jury present and in place

#3 When he first hit us it was from the front and then he hit us from the drivers side. When he did this it made me get out of the car and I told her to get out of the car. I was still on the phone with 911. I know I was screaming but don't know what else I was saying. There was a lot of hitting on the drivers side of the door so I got out my side (passenger) and told her to get out as well. When I got out I found myself in the ditch. The Honda was still moving a little bit so the blazer was still pushing the Honda. My sister came out right after me – she also came out the passenger side. I could see a little bit over the top of the car and I could see to my left. I was lower down than the back of the car. Not until I was outside the passenger side of the car before I could see what was still going on. I still had my hand on the car. I could see down the road to the left. The Honda was more to my right. EX #56 – shows to jury where I was standing I got out of the car. At first I couldn't see the blazer then I could see it driving. It became more visible as it came from the rear of the car. I could see my mother holding the door and looking straight up the road. I could not see my father. When I saw my mother I didn't know where the blazer was. My mom was running – making a half circle to the passenger side of our car toward my sister and me. Mom was coming across the road coming toward us and next she had her hands on the front of the SUV and the next thing I know she was hit and on the ground. She had her hands on the front of the hood and she was still moving. She was looking at it and her feet were crossing over – going sideways. (demonstrates) As she was doing this she was coming in my direction. Shows on photograph where I remember Mom getting hit.

DA1 Objection

J Clarify.

#3 From where I saw the blazer I think it traveled about 10' before it hit my Mom. I remember seeing her go down. She was pushed over (demonstrates) I remember seeing her get run over and that she was bleeding. I could hear the sound of the blazer accelerating. As it hit my Mom it was still accelerating. There was no break in the acceleration. After it hit my Mom it continued away. I was able to see the driver of the blazer as the door came visible from behind the Honda. I was at the door of the Honda looking up. Identifies the defendant as the driver. As he was leaving I heard gunshots and I took off running to my Mom. I looked at her and there was a big trail of blood coming down the side of her. She was not moving at all. After the SUV was gone I remember a sheriff finally coming. My Dad, sister and I all went to my Mom. She was not moving and I could not see if she was breathing. I was still on the phone with 911 and I remember telling them that he killed my Mom. I think it was 30 -45 seconds after he killed my Mom until the Sheriff arrived. I'm not sure. When he got there he got out of his car and went to my Mom to see if she was breathing. At some time ambulance and other officers arrived. I was taken to the Rathdrum police department and they asked me and recorded what went on. There

were a couple different guys there. Some came from the sheriff's department and we ended up talking to a couple of different ones. I was put in a room alone with a sheriff's detective and I talked to him. **EX #46C – diagram** – marks on diagram where I saw Mom get struck. Marks with an X and signs name.) **EX #151 – CD of the 911 tapes.** This has both the first and second calls. I have listened to it and it is true and accurate.

DA1 Ask to listen to it first.

J Recess – admonishes jury –

Log 2960

J In session – re: #151 – I understand there are some questions regarding the versions of the recording and what we can do is play both versions – DA to bring in their player for the version they wish to play. Return the jury – jury present and in place. We'll **admit EX #151** – explains to jury that we'd play both versions due to different types of recordings. We'll play #151 at this time and the other version later.

PA Publishes #151 (Log 3225)

Log 3669 – tape change to Tape 62128 Log 0117)

EX #151 continued

(Log 0273)

XE#3 The male voice at the end was my Dad's voice and I was saying "give me that" - he had his gun – he didn't give it to me but put it on the seat of the car. I remember moving the hair off my Mom's face. Dad was asking where the cop was.

New Years Eve I had attended a party with my sister Jovone. There were people in and out of the party and we got back to her house about 3:30 am. A good friend who had not been drinking took us home. We went to bed as soon as we got home. We got up about 10:30 – 11:00. I don't remember getting a call from Seth Smith at 7:45 New Years morning or from my parents about 8:00 New Years morning. I know I talked to Seth before I left my sister's house but don't know what time it was. I think my parents called me. I think I got a number of calls that morning – I wasn't wide awake. Re: cell phone use – I don't know how many calls there were. I felt totally fine when I woke up – not tired or drunk. A blazer and SUV are the same thing. My sister noticed the vehicle first. When I saw it I first thought it was our neighbor Peck – he's known in the neighborhood for speeding. I have flipped people off for their driving. I don't play car games or flip the neighbors off as a game. My sister and I didn't slow down to see if it was the neighbor. We didn't pull out to cut him off when he began to pass. We were just driving home.

When he was standing outside the Honda driver's door he was standing 1 ½ - 2' away. I don't recall him trying to open the door. The Honda sits kind of low to the ground. He was standing close to the door. He gestured "what was going on, what the fuck is the problem, what's going

on.” I told the 911 officer that he swore at us. We followed because there was no plate on the back of the auto and so that we could tell the officer where he was going. I don’t know which one of us decided to call our parents. I don’t recall my sister saying “let’s call Dad” when I was on the phone with 911. I remember testifying at a previous hearing and indicating that we stopped for the stop sign – I didn’t tell Mr. Adams that we slowed and rolled through. We weren’t trying to catch him. When he sped up we sped up. A lot of the time we didn’t have to increase our speed because the roads are pretty straight and we could see a long way. I’m not sure how fast we were going on Weir Rd. On Seasons road I think we were going 60 or so. When he turned around on Seasons and passed us we also turned around. We did the same on Weir. I don’t recall seeing the people on Weir when we turned around and came back. I remember telling the dispatch operator that we had lost sight of the blazer.

I called our parents but was surprised when they showed up. I told them briefly what was going on. I don’t think that my voice was excited when I called them. Dad didn’t say they’d come and catch up with us. I didn’t say to come down here. My younger sister and my nephew didn’t come with my parents. When they arrived my parents pulled in beside us and asked if everything was OK. We talked 2-5 minutes. My parents didn’t get out of their car – they pulled up beside of us and we talked. I didn’t know that they were going to go looking for the blazer. My parents came back and talked to us again after the officer had been there. Dad was upset that this was happening to his girls. I don’t know what he was feeling. He didn’t act any differently than he normally acts.

I recall talking to Deputy Klinkefus about the direction the blazer traveled. He spent a couple minutes with us and gave us a form to fill out – we each had a form. The officer said he’d go look around and come right back. He said to call 911 if I saw the blazer again. Dad asked why the Deputy went the way he did instead of the other way. I don’t know if he was irritated. Dad drove back that way and after my parents left in enough time to drive to Weir. We started our reports and didn’t get very much down at all. When my parents turned around they were behind the blazer. The defendant passed us and flipped us off and mouthed “fuck you” I told this to someone during an interview. I remember the dispatcher telling us to slow down and not break any laws. We got up to 90 MPH on Scarcello Rd.. I saw the blazer in the snow bank and saw him put it in reverse to get out of the snow bank. From where the blazer hit the snow bank to where we were is like the distance in the courtroom from corner to corner – kitty corner. I saw my parents angled into a driveway where the driveway and road meet. They probably would have gone into the driveway if they weren’t hit. **DEF EX A photo** – draws placement of parents car and blazer.

DA1 Motion to admit EX A

PA No objection

J Admit DEF EX A

Juror asks for clarification re: drawings on exhibits

#3 the circle indicates the front end of the blazer.

J Recess for the day – return at 9:00 am tomorrow. Admonishes jury.

Log 1904

DAY 4 – August 25, 2006 – TAPE 62129 Log 1756

J In session – return the jury – jury present and in place

C Swears #3

XE#3 cont

When the collision occurred the Subaru was moving forward slowly. The blazer was not headed into the driveway – I saw it heading out of the driveway to the right which was east – toward the drivers side of the Subaru. After the collision he came straight to me and my sister in the Honda. The Honda was not over the center line. The collision with the Honda was head on. The Honda began moving immediately and that's when the screaming started – when we saw them coming to us. At the time of the collision we were slowly moving still so her car would have still been in drive. I didn't see the blazer go into reverse – the next thing I saw was the grill in the drivers side. When I stepped out we were barely moving. I believe we were stopped when I yelled for Jovone to get out. She did get out. When I got out I was facing up to the road next to the door. I didn't have to change body position to see what happened to my Mom. I saw my Mom after I got outside the car. After my Mom was hit I heard one gunshot – one is all I remember. When I first saw my Dad he was headed toward my Mom. I saw the gun in his hand. His left arm was in a sling due to an injury. There were people headed east on Scarcello and 3-4 cars sitting there who saw this. There were people stopped where the Subaru was hit who stopped to talk to us. I remember there was a lady there in a van – she asked what happened and then she left. I believe that the officer was there and made us get back. On the 911 tape it must have been Jovone who said "Daddy, Daddy, he just went into a snow bank." My Dad was not in the car with us.

DEF EX B – is the form that the officer gave to us to fill out – I didn't get much done.

DA1 Motion to admit EX B

J **Admit DEF EX B**

#3 **DEF EX D - drawing of what happened** – I made this drawing right after it happened. This is dated January 4.

DA1 Motion to admit DEF EX D

PA No objection

J **Admit DEF EX D**

#3 This drawing indicates where the Honda was when it was hit – marks with X

DA1 Request this be published to the jury

PA Ask the X indicate Honda first.

J Yes, then publish to jury.

#3 **DEF EX C – list of numbers I called or received.** My phone number is on it – I get a statement but it is not set up like this. This is for the phone that I had at the time.

Voir Dire

I have not seen this document before and don't know how DA1 got it and don't know if it is accurate.

PA Objection

J Sustained

#3 I recall testifying at a prior hearing as to keeping eye distance with the defendant. I don't know what word I just but I remember keeping some distance. I kept eye contact with the vehicle. When he came around us he mouthed the words "fuck you" to us. *Reviews transcripts of preliminary hearings.* I wasn't asked if anything was said, just any gestures. I don't recall speaking to Deputy Klinkefus. We were taken to Rathdrum PD and spoke to different people. After January 1 I spoke to different officers but not a full statement. Re: persons interviewed with. Between February and now I have spoken to Art and another attorney. I talked to an attorney about what had happened because we have been having problems with the insurance company paying for my back surgery. I signed papers regarding suing the county and specifically Deputy Klinkefus.

RD#3 My sister had back surgery about 6 weeks ago. I know why she had back surgery.

DA1 Objection

J Will allow

#3 Her back was hurt during the wreck.

Log 3433 – tape change to Tape 62130 Log 0001

#3 Reads from transcript of 2nd preliminary hearing. I've had to talk about this incident many times now. My testimony has not changed. On the 911 tape when Jovone said "Daddy, Daddy, he hit a snow bank" I don't know where my parents were – it is possible they were passing by us at that time. When my parents passed us my father, the passenger, would have been closer to my sister Jovone, the driver of our car. After the contact between the blazer and

Honda the blazer had a clear path for the blazer to leave. We were in our own lane and not blocking. There was never a time when the blazer was pushing that I heard the blazer not accelerating. **EX #150 is my original statement.**

PA Motion to admit EX #150

DA1 No objection

J **Admit EX #150**

#3 EX #68 is the blazer he used to kill my mother.

PA Ask to publish EX #1 – photo of the family

DA1 Objection – it can go back in with the jury.

J It's an admitted exhibit – publishes exhibit.

RX#3 EX #23 photo shows debris in the road – it crosses over the center of the road.

PA Ask witness be excused.

DA1 We have subpoenaed her as well – ask she remain on call

J Explains to witness.

PA Calls #4

DA3 Motion outside the presence of the jury prior to this witness.

J Excuses and admonishes jury. (10:20 am)

DA3 Ask for a Daubert hearing – we don't believe this evidence is scientifically reliable and ask that the determination be made.

PA Not appropriate

DA3 RE: explanation

J Bring witness forward

C Swears

#4 **Eric Arthur Hartmann** – working in audio/music field 13 years – explains. Re: equipment. Re: training and experience. I worked for Remake June – August 2006. All sound is vibration. Explains procedure taken when asked to make an enhanced copy of a recording. I

have been doing this for over 10 years. I can listen to it and watch the wave form on my computer. You cannot eliminate all background noise but you can definitely eliminate a large amount of it.

I received a 911 tape approximately 2 months ago from Sgt. Maskell. He was looking for enhancement of the digital files. He was looking for enhancement of the 3rd file. The second 911 call was broken down into 2 computer files. I used an Adobe wave editor. I listened to all 3 files to make sure there was no other important case related data on those files. At his request I was specifically looking for anything relating to gunfire. Explains 3 steps taken – I've done this hundreds, maybe thousands or times. I was asked to specifically look after a vocal cue by Joleen Larsen of "Oh my God, he's turning around." EX #144 – this is what I was looking at on my screen. Explains markings on exhibit to incidents as they occurred and recorded by 911. I have also generated a recording EX #152 is that recording. I saved this wave file that I enhanced on a CD. The difference in this recording and the first recording is removing the background noise, maximum noise and bring out things in the background to be heard more clearly. The recording is approximately just over 4 minutes. In a separate file I also isolated the crashing incident isolated and then the percussive incidents 1-5 – the CD will play the entire CD then followed by each isolated incident separately.

XE#4 Re: works done – I have never testified as an expert before. My degree is in visual arts. I am a member of Audio Engineering Society. 2 different people can come up with 2 different enhanced versions. There are other programs you can use. I use Adobe because it is the program provided me by Remin. All programs are basically the same. If you use another program you can come up with a different recording. I analyze the recording and make judgments based on my analysis. There are no set guidelines for my analysis. To a certain degree the state told me what they were looking for. They told me they were looking for gunshots – I'm not sure they told me why they were looking for it. Reviews letter – I am familiar with it and it does indicate the defense contests the gunshots.

J I'll review the exhibit

XE#4 cont.

It's a fairly simple process in determining what sounds to filter out and what to not. The difference is where to determine the quiet spot. I picked the longest spot I could find with no sounds in it. I would like to think that someone else in my position would have done the same process. There is no way to filter out the screaming – in my opinion. In some spots the screaming may cover up other sounds. There are some spots where truly nothing else can be heard but the screams. Loud breath intake or exhales may also cause this by overloading the microphone. I try to eliminate the breath sounds but it is possible that one of the breath sounds can cover over another sound. The percussive incidents – some are longer than others – the cues are not a determination of length but just where they started. I pick an arbitrary time to start and end the cue – someone else might select a slightly different time. I set the cues up so that the gunshots were within the cues.

I used an audio CD that has variety of gunshots to determine the cues. All I could do was look at the class characteristics of a gunshot to determine where to look. I had no idea what type of gun

was used or what environment it was shot in. There is a certain amount of artistry involved but to classify a gunshot as an event I don't think another audio tech would argue with me. I was looking for class characteristics. Gunshots are not the only thing that would have these characteristics – someone striking a drum, etc. Two cars hitting each other would not be the same, or a car door shutting. I have no idea what an airbag inflating sounds like. A car crashing would appear longer, sound longer, than a percussive incident.

J ?'s #4 All the things I spoke of are within the realm of audio engineering. This is the typical method used by audio engineers in the field. There will be slight deviations in everyone's process but the basics are the same with everyone in my field. I know that this type of enhancement has been used in a courtroom setting like this – not sure if something of this nature can be measured re: scientific reliability. I've not seen numbers re: reliability but they have been used for many years and are industry standard. My opinion is that it is very reliable. This particular case with the screaming and background noise was more difficult than others that I worked on. It is possible that there is evidence being obscured by, for instance, someone breathing heavily over a microphone. I can only say that a sound is a percussive incident and that a gunshot is a percussive incident. There are many factors in sound. So much with sound has to do with environment. This is why it is tough to make a voice analysis off a tape.

PA/DA3 No further evidence.

DA3 Argument The real question is if this is science or art. There is no objective way of evaluating, testing. This is clearly a subjective decision based on his analysis. To allow this testimony to go in front of a jury is clearly prejudicial. Even if this was qualified there is no evidence that this witness is an expert.

PA I've laid the foundation.

J Comments – I'll allow this information to proceed to the jury. PA to lay the foundation over again in front of the jury. Return the jury – jury present and in place (11:25 am). The next witness Mr. Hartman has already been introduced and sworn.

#4 I work in Arizona doing animations, voice over, waive editing, mastering, etc. I have been working in this industry over 15 years. Re: equipment/studio used. I have been doing enhancements over 5 years which includes digital recordings. I am looking to reduce noises, bring out intelligibility, remove pops & clicks, etc. I use a computer to do this. The first step is to make a copy of the original on the computer and then load it into the editor (Wave Editor). I analyze the recording and listen and look at it. I have a BSA from Arizona State University. I took classes in audio recording including studio engineering. Any sound is vibration. A recording is reverse engineering of the same principal.

Log 3472 – tape change to Tape 62131 Log 0001

#4 On my program the sounds are shown in wave form. I watch and listen while working on a recording. I use Adobe audition and sound forge generally. I have used these more than 5 years and am very comfortable with it. I use dynamics processing and normalizing. The end

result is that it is the same recording but enhanced. I have used this particular type of process for over 5 years and thousands of times.

I worked for Remin for two months in the Phoenix office doing audio and video forensics. I took information from law enforcement. I worked on the 911 call that involves this call. I only worked for Remin for two months because this particular case in particular left me with the inability to sleep. After I worked on this particular case I decided to not work for Remin any longer.

DA3 Objection

J I'll let it stand.

#4 Through windows I can print the screen in wave master. A vocal cue can be something on the tape someone is listening for. A percussive incident would be an audio event that is very loud and happens very quickly. In this case I got the 911 calls. I got a call from Brad Maskell and then I got the 911 recording. On one CD I was sent 3 files. The first file was the first 911 call. The 2nd and 3rd files are the second 911 call. He wanted me to take a look and see if I could identify any gunshot. In preparation I listened to some studio recorded gunshots. A gunshot is consistent with a percussive incident – something that happens very very quickly and then the only thing you might hear after that is sound bouncing off, for instance, a wall or tree. I did not enhance the first call or the first file of the second call. I did listen to all but focused my attention to the second half of the second 911 call. The first call and first half of the second 911 call I did not hear anything consistent with a percussive incident. I loaded the CD and used the procedures as indicated prior. What I was doing was on the computer screen and I was able to download a copy of the computer screen. EX #144 is an enlarged screen shot of the computer screen when I was working on the file. I listed a cue list. The vocal cue has a time stamp listed next to it. This is an accurate diagram and will help me in my testimony.

Side Bar

J I don't know that I'll admit the exhibit at this time but I will allow the witness to testify from it at this time.

#4 Describes wave form, time stamp – cue lists crashing and percussive incidents 1-5. The vocal cue list I was asked to look for was "Oh my god, he's turning around." The crashing cue lasted for about 2 seconds – this was after the vocal cue by about 13 seconds. Explains percussive incidents – these are consistent with the sounds of gunshots I got myself acquainted with. All the percussive incidents are very fast – the first one occurred approximately 4.3 seconds after the crashing incident. Re: time frame in percussive incidents. The last two were basically back-to-back. As a result of the enhancements I did another recording and pasted the information between the cues and recorded them so they could be listened to separately if need be. The enhanced 911 call is just over 4 minutes and the crashing and percussive incidents are probably 5-6 seconds long.

J Recess for lunch – return at 1:15 pm. Admonishes jury.

Log 0879

J In session

DA3 Motion for mistrial – may I voir dire the witness?

J Yes

#4 I spoke to PA prior to this trial and told him I quit my prior employment due to the nature of this case.

XE None

DA3 Motion for mistrial – highly prejudicial – this amounts to prosecutorial misconduct. This is the 3rd time the state has elicited prejudicial information from a witness. PA knew what the answer to the question was and specifically asked the question to inflame the jury.

PA He's correct I knew the answer and specifically asked the question. It is because I knew his testimony would be highly contested and I thought him working at this company for only two months might be an issue and that's why I specifically asked that question. This is not prosecutorial misconduct and should not result in a mistrial.

DA3 This was not as a result of XE – there is no reason for that testimony to be elicited but to clearly inflame the jury – this is another straw and Mr. Ellington can no longer get another trial.

Log 0992

J Comments – I think it was unnecessarily elicited from the witness. I'm not satisfied that it is prosecutorial misconduct and no mistrial at this time. It is abundantly clear that this case has some disturbing circumstances attendant to it. This case is unusual in that we have a recording of the very moment Ms. Larsen was run over. This case has an element that is particularly disturbing. The mental state is the question that will ultimately be derived and that is what we need to focus on. I know that the state has made considerable attempts to admit photos that are particularly gruesome. Bringing out this witness's being disturbed by the recording is completely unnecessary. Note for the record that I'm starting to become concerned and the state needs to focus on the facts and that can be done without focusing on the emotional and graphic issues. We simply cannot get around some of them. Deny the motion but note it.

PA I have to prove a number of elements to prove murder. That requires me to produce evidence of how, when and where she died. There is a great body of case law that states to the effect that although gruesome evidence may be prejudicial often times there is probative value. There are a couple of different witnesses the defense will call that will attempt to put Mrs. Larsen in another position – closer to the Honda. These photos contain other evidence i.e. blood smear,

hair and other evidence. I'm simply trying to prove my case. Photos of the victim typically come in – it's a rare situation when they are not. I'm simply trying to prove my case.

J There was a stipulation via opening statements that Ms. Larsen died. I realize there may be a question as to where this took place. The question is if the probative value is outweighed by the prejudicial nature of the photos. I wanted to make it clear on the record that this case has some graphic materials in front of it and I think we need to proceed cautiously.

Return the jury – jury present and in place (1:42 pm)

Log 1393

#4 EX #152 – This is the version after the enhancement – this is a copy of the original 2nd half of the 2nd 911 call.

DA3 I have an objection that needs to be heard outside the presence of the jury.

PA I'll lay further foundation

#4 The first track is the wave file the second file is the actual incidents crash and percussion separately – all separated by one second of silence.

PA Motion to admit

DA3 Objection – explains.

J I'll note the objection – there is enough foundation – **admit EX #152.**

PA Motion to publish #152

J Granted

Log 1602

#152 played

Log 1789

XE#4 I have a BS of Applied Arts if Visual Arts - have audio recording classes. This is my first time as testifying as an expert in a criminal trial. The work I did is done with the help of a computer. I use the Adobe program but there are a number of other programs you can use. This is the program that was given to me by Remin. Remin provides a variety of different services to law enforcement in the Rocky Mountain Area. I received a phone call from Detective Maskell and then he filled out a request letter and it was approved and we got the case. DEF EX F – I recognize to be the letter requesting investigation analysis in this case. This letter indicates what

the police are looking for. I became involved because the police had very specific things they were looking for.

DA3 Motion to admit EX F

PA Reviews letter – No objection

J Admit DEF EX F

XE#4 re: procedure. I use my judgment as to what I should do to get the information the state has requested. Explains percussion incident. The cue is a reference point as to where the event occurred and not how long it is. Explains “percussive sound.” Sounds keep going – the cue is just a reference.

“Clipping” means you’re going over the sound level that the microphone will accept. I don’t know the clipping level or model # of the microphone involved here. Distortion changes the sound of the wave form. It is possible that if the microphone was clipping and there may have been sounds behind it that I could not hear. During the screams some of the time she’s clipping and some of the times she’s not. Possibly 1 or 2% of the recording had clipping.

PA Objection

J Provide a new question

#4 I’m not sure what she was describing as I wasn’t there. I’ve never heard an airbag go off. I was unaware that an airbag had deployed. It is possible that dropping the microphone could have clipped it out but I would imagine that I would be able to tell that it had been dropped and picked up. I did not do an investigation as to other sounds. You have to focus for certain sounds – the ones that I was asked to and I kept my mind open as to other events that could happen. The gunshots were my requested focus points. I don’t know how many decibels it takes to clip out this microphone. I could hear something crashing. I heard one crashing incident of 1 ½ - 2 seconds.

RD#4 These percussive incidents were loud incidents consistent with gunshots. I cannot say what the probability is that there may be percussive incidents behind the clipping incidents.

DA3 Objection

J Overruled

#4 If I’d found anything else of any value at all I would have no hesitation mentioning it.

RXE#4

I don’t recall any clipping at all before the vocal cue but after that vocal cue there was clipping.

J Witness excused.

PA Calls #5

C Swers

#5 Anthony Hutchison - I worked for Northern Lakes Fire Department for 9 years having resigned in April of 2006. I have resigned and am currently a student. The EMT course is 160 hours. RE: training. I have made a determination several hundred times that someone is deceased.

January 1, 2006, we were dispatched at 12:39 pm to Scarcello road. We arrived by ambulance with the first unit being there at 12:47 and the unit I was in was about 20 seconds behind. When I arrived there was small car on the north side of the road, deputy on scene, another paramedic on scene who was with the victim on the road – substantial amount of blood loss. I went to that person and we attached a pulse monitor – there was no activity there. With our protocol and her extensive amount of damage we did not try to resuscitate her. The last unit cleared the scene at 1331.

XE None

J Excused

PA Calls #6

C Swears

#6 Jerry Lee Groth – I live in Athol, ID. I work for Forest Steel. January 1, 2006, I was on Brunner and then South on Ramsey – this was about 11:05 am. I was driving my red Geo Metro. I was alone and heading toward Post Falls. I saw 2 vehicles coming north bound – white car and a blazer behind it. My thoughts were they were either towing the blazer or he was tailgating – they were very, very close. EX #2 – indicates direction of travel. The white 4-door was in front and the auto behind it was a full size blazer. It caught my attention that it was very close- it couldn't have been more than a car length behind it. I drove past – just barely – and the rear vehicle swerved out to pass. It was pretty disturbing because I was just getting by. As I was passing I was roughly 10' from the blazer and I got a good look at the driver. I saw him go around and pass – I started to go down a hill and lost sight so I couldn't see him come back in. **PL EX #85 – photo** – looks a lot like the driver of the rear vehicle. I recall him wearing a baseball type of hat and more of a scruffy beard than in the photo. It appears to be him, the defendant. I didn't call the police. I read an account of it in the paper and it sounded like something I had seen so I called the sheriff a day or so later and told them what I saw. I don't know the defendant or the Larsen family.

XE#6 All I saw was what I said – both north bound and the blazer following close. I don't know what happened after. I don't know the defendant or know of anyone that knows him.

J Witness excused. Recess – admonishes jury

Log 0435 tape 6213

J Back in session – return the jury – jury present and in place (2:50 pm)

PA Calls #7

C Swears

#7 Charles Alan Robnett – ISP since 1998 re: duties, training and experience. I learned to prepare “to scale” diagrams. There are different types of marks vehicles leave on the road, skid marks, acceleration marks, scuff marks with striations. When we investigate a crash we look for corresponding damage. There are things such as paint transfer. Debris on the roadway are pieces of the car that have fallen off, fluids, under debris. Paint transfer is paint coming off onto another object. We make a record of tire marks, roadway debris, roadway itself, striations, roadway obstructions, vehicle placements.

I run a base line from one end of the site to another. When I get the start of the reference point I take it to the end of the crash. I use a 300’ tape and a 100’ and 25’ tape to go off to the sides. It is more than a one man job. I typically have the other person write down the numbers as I call them out. I generally use a legal pad and then transfer it to a diagram. I typically use a computer program and plug in the information I have taken down re: measurements.

January 1, 2006, I went to Scarcello road arriving at 1:15 pm. I was asked by KCSD to come to the scene to help the investigators collect data. I was asked to do a reconstruction of the scene. At 1:16 dispatch notes say county wants me to do reconstruction. I parked on the south side and took an overview of the scene. There was a yellow blanket in the lane – Ms. Larsen underneath it. I saw a Honda car, acceleration marks coming around the Honda coming toward where Ms. Larsen was and plastic parts of the Honda and some road debris on the road way. There was a Subaru with two distinct marks under the Subaru and leading to the snow bank. I took 12 – 13 photographs. **EX #39 photo** shows marks and debris together with the Honda. I took this photo 20-30 minutes after I arrived on scene. Sgt. Carrington borrowed my digital camera. **EX #35A is a photo** of the Honda on the shoulder showing marks toward the body and blood of Ms. Larsen blacked out. **EX #39A is a photo** of Ms. Larsen and blood blacked out with marker, medical paraphernalia, blood smear and hair. #35A helped me make an analysis. #29A showed the blood trail. **EX #38 photo** facing E bound – Honda, debris, tire marks on the center line. #45 photo of the front of the Honda. EX #29A and #35A appear to be correct. #38, #39 and #45 are accurate photos.

PA Motion to Admit 29A

DA1 #29A and #35A

J **Admit #38, #39, #45** – we’ll have discussion on the other exhibits at another time.

#7 I called for another Trooper to assist me. When I first got there it was not raining but when I began my measurements it started to rain. It was too late then to take a drag factor. I recorded the width of each lane. **Diagram EX #46** – describes placement of items. This diagram is accurate using my measurements.

PA Motion to admit

Voir Dire The lines that are connected were connected on the scene. I don't believe there are any lines here that I did not measure.

DA1 No objection

J Admit EX #46

#7 **Describes EX #46 to jury** –The vehicle stopped just prior to the snowbank – it backed up and went forward. The marks show the blazer going around the Subaru and collision spot then continues to go around the Subaru - around and into the west bound lane where the Honda was (acceleration marks show evidence of spinning tires). Honda was pushed to it's final resting position by the blazer. The marks leading up to Ms. Larsen do not go all the way back to the side of the road. Weather is a condition for short lived evidence. The Honda was pushed by the blazer nearly 50' to the shoulder.

J Recess for the week – return Monday at 8:30 am – courtroom.#9 – admonishes jury.

Log 1787

**SEE INSERT FROM DIGITAL COURTROOMS FOR
AUGUST 28 AND 29, 2006**

Day 7 – August 30, 2006 – Tape 62293 – Log 0333

J Back in session - return the jury – jury present and in place.

PA Calls #11

C Swears

#11 Daniel R. Gregg – KCSO Deputy/jailor 17 years 4 months. RE: duties, training and experience including basic medical training. January 1, 2006 about 12:30 pm I was off duty traveling with my wife and child in my personal vehicle on Scarcello road. I saw Deputy Klinkefus's vehicle with lights on and someone lying in the road. As I pulled up behind the deputy's blazer I told my wife to stay in the auto and keep my daughter otherwise occupied. I saw a body lying in the road and saw the Deputy kneeling down with his head up talking to someone. I tried to find a pulse in the neck, wrist and other places but was unsuccessful. The Deputy went to talk to persons standing around – I wasn't sure who those persons were. I didn't talk to them when I first got there. Towards the end medical arrived. I'd been there for about 20 minutes before medical arrived. I wrote a report April 26, 2006, at the request of Deputy Maskell. This will refresh my memory. I arrived 12:34 – 12:34 pm. I had my wife move the suburban to block the road – this was about 12:35 pm. There was a small pickup that kind of snuck through – I don't know how that happened. It went all the way through to the other side. The driver of the truck drove in the opposite lane of travel around Ms. Larsen very slowly. The only deputy there in uniform was Deputy Klinkefus. He and I were both focused on what we were doing and were unable to stop the pickup from doing this. She was on her left side, in order to start CPR I needed to move her to her back to check for open airway. I was unable to establish an open airway for CPR – there was too much swelling in this area (mouth/lower face) to do CPR. I happened to look up and saw who was later identified to be Mr. Larsen get into a small brown vehicle. This brown car could have been a maroon car. I don't remember the make. There was a white car with steam or smoke coming from it at or near the borrow pit. The white vehicle was a Honda Accord. EX #16 – shows position of cars and my suburban. After we rolled Ms. Larsen over there was a grinding/clicking noise and turning smell that was coming from the white car. This noise started about 12:37 pm There was smoke, grinding noise and clicking sound. At some point I went to the white car. It sounded like it was in gear. I went to the passenger door which was still open. The car was still in drive and the car was on. I put the car in park, turned it off and put the keys on the seat. The passenger door was open to that car when I went to it.

I saw a man who I later found out to be Mr. Larsen getting into the brown car. I got up and ran over to him facing him the whole time. I can't say if he moved the vehicle. When I got to him he was in the car but I don't know if the car was started at all. I told him he couldn't leave until he talked to the Deputy. He got out of the car and leaned against the side of the car – he seemed visibly upset. He later went to the side of the road to a group of people and talked to them. EX #47 photo shows the Subaru and it was in approximately this position – as I recall.

I periodically checked Ms. Larsen for a pulse but was never able to find one at all. I have reviewed Deputy Klinkefus's video and I am visible in that video wearing blue jeans and a black and white checkered flannel jacket. I was at the scene 31 – 32 minutes leaving about 1:04 pm. RE: persons present when I left. I was there when medical came. They came from Highway 41 to us behind the Subaru and to the south of Ms. Larsen. There was a red Durango there also – that's all I can remember.

XE#11 I noticed Deputy Klinkefus at Brunner and Ramsey – he didn't have his lights on at that time – I saw his lights go on – he was behind a blue truck – went around that truck fast. I didn't try to follow him. Explains auto at the scene. I saw a truck headed westbound toward Highway 41 travel through the scene. It came within 5-10' to me – it caught my attention. To my knowledge that person never stopped. Medical personnel came from Highway 41. I don't know if Deputy Klinkefus separated the three family members. Ms. Larsen lay in the roadway about 10' from the Honda. When I told Mr. Larsen to get out of the car he seemed agitated. I did not see the gun. I saw Mr. Larsen's arm in a cast/sling.

J Witness excused.

Log 1410

PA Calls #12

C Swears

#12 Carol Ellen Cunningham – I live on West Scarcello road for over 15 years – 5 acres right on Scarcello road. There is a small trailer and camper there now – soon to be a house there. I have lived with my ex-husband Ron and my children with there. I live in the trailer and right next to it is a camper where Ron stays. PL EX #7 – the small trailer house shown is gone. This shows where Ron lives and where I live. There is a pump house and a shed there. People who come to visit generally park in front of the trailer. I know Jonathan Ellington and have for a few years. He's a friend of Ron's. Identifies defendant as Jonathan Ellington. When I came back from the store I went over to Ron's and Jon was there. This was around noon somewhere. We have an intercom system from where I live to where Ron lives. I didn't hear a loud vehicle arrive about 6:00 am. I never talked to my ex-husband about a loud vehicle arriving. I do remember speaking to a police officer that day.

When I was coming home and on Scarcello I had to stop. A young girl came up and said that something awful had happened and that I'd have to turn around. I was on my way back from the store having taken Highway 41 to Scarcello. I think the road was blocked when I was on Scarcello. I would imagine that I had talked to one of the lady's daughters, Larsen daughters. She said something awful happened and I'd have to turn around. I did turn around. I didn't look further down the road I went back to Highway 41 and cut across to Ramsey to Scarcello. An officer stopped me right away. I told him I just lived right down the road and he let me go. I wasn't able to see anything on Scarcello. I got home and unpacked the groceries. I then went to Ron's camper and told him that something was going on down on Scarcello. Jon was there.

They were just sitting there – the TV was probably on. I couldn't say for sure but they were probably drinking. I told Ron that something was going on down at Scarcello and that I had to turn around. I said it in a normal voice. Ron was about 4-5' from me and Jon was closer – about 3'. Ron didn't say very much – he just seemed surprised. I didn't really look at Mr. Ellington – he didn't say anything. Jon's vehicle was parked on the other side of the water pump. This caught my attention because someone was there. I don't think he'd ever parked there before. **EX #64** – shows my driveway – shows Ron's trailer in the picture and where people generally park. Parking behind the pump house is an unusual thing for people to do. **EX #65** – shows road that can be taken to the back of the property. This road is not generally used. Reviews PH transcript – back then I said he parked about 20' from where he generally parks. The pump house did block visibility of the blazer – I could see the back part of it. It wasn't very long after I told Ron and Jon what happened that the police arrived. Reviews PH transcript - I said it was about 15 – 20 minutes between the time I told them and the time the police arrived. It surprised me a little that Mr. Ellington was parked behind the pump house.

DA Objection

J Sustained

XE#12 My statement at the PH said that I guessed it to be 15 – 20 minutes between the time I told Ron about the incident on Scarcello to the time the police arrived. Reviews other PH transcript and I said 1 hour to 45 minutes. Jon is Ron's friend but he generally greets me if he sees me but he did not on this occasion. My ex-husband has physical difficulties walking due to a number of different reasons –arthritis, aging.

RD#12 Reviews PH transcript – my prior testimony said that Jon was also there early in the morning – this does not refresh my memory as to him being there.

J Excused for now – may be recalled.

PA Calls #13

C Swears

#13 Ronald D. Bradshaw Cunningham – I live on Scarcello road and have been there 15 – 16 years. I know Jon Ellington and have for 15 – 16 years. Identifies defendant –we know each other through relatives and friends. We're good friends – he's like a brother. He'd come over and visit quite often. He came over January 1, 2006. He came over quite early – 6:00 – not quite light out. He drove his pickup with canopy, or SU. This was his Chevy blazer – he didn't have it very long. I'd seen him drive it for a couple months. I was awake when he came over. He came in and we watched TV and talked – normal things. He was drinking very little. Within 4-5 hours he'd had maybe 4 beers. He brought the beer – I don't drink. He brought Keystone – 12 oz. cans. He'd go out to the car and get one at a time. I don't know how many he had in the car but he had 4 containers in the house. I didn't go out to the blazer to see how many he had –I don't walk.

We talked about some problems he was having with his girlfriend. That was between he and his girlfriend – I don't make it a habit to get into other people's troubles. He didn't tell me about the troubles. He didn't tell how long the argument was. He just told me he had the trouble. I believe he left around 11:00. He'd been there 5 hours. When he left he said he was going to go home and go to bed. He came back about an hour later and he had a Zima with him. I'm real sure it was after 11 that he left. He said he was going to go home and go back to bed. This was between 11 and noon.

Log 3428 – Tape change to Tape 62315 Log 0001

I was ready for a nap myself having been up since 4:00 am. I have no idea why he came back. He never mentioned anything he just came in and sat in his usual place. He'd been gone 1-2 hours. When he came back he had one Zima with him. He sat there and drank it and we watched football. He was quiet and white. He looked different. I didn't ask him – I don't interfere. I didn't know what happened until the officer came in and told him. We were there about 20 minutes before the police came. Jon said nothing about it. My ex-wife never came in and mentioned what happened down on Scarcello road. I didn't notice where his blazer was parked until the officer mentioned it. It was unusual (where it was parked).

XE#13 When he came back he was whiter than normal – kind of like he is now. Where he was parked would not be a good place to hide if someone's shooting at you – not many places to hide any more.

PA Objection

J Sustained

RD#13 I didn't see any injuries on him and it didn't look like he needed any type of medical care. I have a phone and did have one when Jon was there.

J Excused

PA Calls #14

C Swears

#14 Tim Burton Johnson – ISP patrol Sgt. - I have been with ISP 14 years 10 months. RE; duties. I am generally in a patrol car by myself. January 1, 2006, I was on duty and went to Scarcello. I heard radio traffic and in response I went to Scarcello road. I heard the call at 12:40 and arrived about 20 minutes after. I went to the actual scene first. I parked east of the scene on Scarcello – several police vehicles, deceased body in road covered by yellow tarp, white and burgundy cars. Several deputies and one of my troopers were there. I don't remember if medical was there or not.

DA2 Objection

J Sustained

#14 I left after about 10 – 15 minutes because we had an attempt to locate the vehicle. ISP Longo assisted me in his own vehicle. Re: areas checked. I noticed the rear end of a gold blazer at the Cunningham residence on Scarcello road. I turned around and told ISP Longo who I'd turned around. I confirmed that it was a white and gold blazer not a white blazer. Trooper Longo and I pulled in. I am familiar with the Cunningham residence driving by there as I live in the area. I have been there on noise complaints before. I spoke to Mrs. Cunningham who was feeding her animals and at that time a white male approached me. I asked if the blazer was his and he said it was. The white male followed me to the blazer by the pump house. I asked him questions – he said he had driven that day. I saw fresh damage on the driver's side. Describes damage including burgundy paint transfer. There was also damage to the front of the blazer and there was a white paint chip there.

At the scene I saw damage to a white car – relates damage. I saw the passenger side of the blazer and the male was still there. I asked if anything happened that day and he said "yes, do you want to see the bullet holes?" At that time Lt. Longo told him to keep his hands out of his pockets and he was arrested. Incident to arrest I found a set of keys to the blazer. I found some cash.

DA2 Objection

J Overruled

#14 I found keys, cash and cell phone in his pocket. At first he appeared to be walking, talking coherently. He did have a strong odor of alcoholic beverage coming from him. **EX #85 – accurate photo of the person I was talking to.** I took this photo at the entrance of the Public Safety Building. He was wearing this same clothing.

PA Motion to Admit EX #85

DA2 Objection with legal argument outside the presence of the jury.

J Jury out – admonishes jury (10:20 am)

DA2 It is not in dispute that the man here is Mr. Ellington. The purpose of this exhibit is to show the surely look on his face – irrelevant.

PA Jerry Groth who testified a few days ago indicated that the person who passed him was wearing clothing consistent with that. It also shows that he has no injuries. This photo does not show him in handcuffs as do the number of other photos I have of him.

J I'm having a difficult time determining why this photo is prejudicial to Mr. Ellington. As far as I can see the photo is fairly favorable. I'll allow the exhibit. Recess

Log 0854

J Back in session – return the jury – jury present and in place.

#14 Identifies the defendant in the courtroom. EX #80 – the shattered window and bullet holes caught my attention. The windshield on the ground behind the blazer had fresh tire prints on it. I had a conversation with Carol Cunningham as to when Mr. Ellington came over.

DA2 Objection

J Explains ruling

#14 Ms. Cunningham said she thought the defendant got there about 6:00 am and stayed there a couple of hours. She said when he returned he went back to watching TV with Ron. Mr. Cunningham told me the defendant had gotten there about 7:00 am.

DA2 Objection

PA Responds

J Will allow

#14 Mr. Cunningham said that Mr. Ellington had left earlier and came back. He said the defendant was gone about 20 minutes and that he was upset when he returned. Cunningham said that the defendant didn't appear very upset and that he was getting a divorce from his wife even though they were not married.

XE#14 Prior to arrest I had a conversation with Ellington and he asked if I wanted to see the bullet holes, plural. I saw the blazer while driving down Scarcello.

J Excused

PA Calls #15

C Swears

#15 William Klinkefus – KCSD 9 ½ years. Re: duties, training and experience. I have a video camera in my patrol car – passenger side. The field of view is outside the front of the vehicle. The recording device is in the trunk of the vehicle. The tape comes on when I manually click it on or when I turn on my lights. I have a pocket recorder I turn it on when interviewing during the normal course of my duties. January 1, 2006, I contacted 2 young women at Scarcello and Brunner road. They said they had been in contact with a vehicle tailgating them and an altercation when the vehicle passed them and stopped. Both Jovone and Joleen talked to me. Jovone was the driver and Joleen was the passenger. I gave them statements to fill out and that I'd be back fairly soon. I cleared with them and went to the intersection and went to Brunner and north to Lone Mountain Trail road. I had been gone 5-10 minutes before dispatch advised the vehicle had been seen again S. on Ramsey. I immediately went back to the area, still trying to

Session: 08282006A
Session Date: 2006/08/28
Judge: Luster, John
Reporter: Rush, Bill

Division: DIST
Session Time: 08:28

Courtroom: Courtroom9

Clerk(s):
Booth, Kathy

State Attorney(s):
Verharen, Art

Public Defender(s):
Chapman, Brad
Schwartz, Christopher
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CR06-1497
Plaintiff:
Plaintiff Attorney:
Defendant: Ellington, Jonathan Wade
Additional audio and annotations can be found in case: 0007.
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/08/28

08:30:13 - Operator
Recording:
08:30:13 - New case
Ellington, Jonathan Wade
08:30:39 - Operator
Stop recording:
08:40:22 - Operator
Recording:
08:40:22 - Record
Ellington, Jonathan Wade
08:45:28 - Judge: Luster, John
Calls case
08:45:35 - State Attorney:



Motion to admit EX 29A and #35

08:45:47 - Public Defender:

DA1 - I object to this exhibit - there is another way to crop those than

08:46:55 - State Attorney:

PA #35A is the best photo showing the acceleration marks and I don't know if

08:47:18 - State Attorney:

there are any from that angle that show them that well. EX #29A - there are

08:47:39 - State Attorney:

no other photos showing the blood smear and hair in relation to her body.

08:48:13 - Public Defender:

DA1 There is another means to crop the photos than using a magic marker and

08:49:57 - Judge: Luster, John

These items are very visible in other exhibits and while I realize that the

08:50:25 - Judge: Luster, John

state has blacked out a portion it is still visible. EX #29A wishes to show

08:50:52 - Judge: Luster, John

the blood smear and hair on the road way. When I heard your argument before I

08:51:15 - Judge: Luster, John

indicated a cropping such as this (shows PA) that this would put everything

08:51:30 - Judge: Luster, John

in proximity and if the state wants to put a photo marked as such I'll admit

08:52:04 - Judge: Luster, John

it.

08:52:07 - State Attorney:

Does the Court have a recommendation re: #35?

08:53:14 - Judge: Luster, John

Explains cropping that can be accomplished. You cannot cut out all the blood

08:53:41 - Judge: Luster, John

cut a cropping such as that (indicates) it would be sufficient.

08:54:06 - State Attorney:

Motion to Admit EX #144 (Hartman Chart)

08:54:29 - Other: Taylor, DA1 Ann

Objection - there are cues that were arbitrarily set by him

08:55:21 - State Attorney:

As I recall he indicated these were not the precise timings of the events

08:55:58 - Judge: Luster, John

Admit EX #144 - he was clear that he was trying to lay the foundation of his

08:56:15 - Judge: Luster, John

timeline. Admit EX #144

08:56:55 - Other: Taylor, DA1 Ann

Motion #46 - Robnett diagram - motion to delete the word "homicide" on the

08:57:37 - Other: Taylor, DA1 Ann

exhibit.

08:57:41 - State Attorney:

Object - it has been admitted as is. I believe it is small and I don't think

08:58:11 - State Attorney:

that the jury has seen it. Murder/homicide.

08:58:41 - Judge: Luster, John

I don't think it is a prejudicial term and deny the motion.

08:59:20 - Other: Taylor, DA1 Ann

We ask then when Mr. Larsen testifies, which we believe will be today - that

08:59:38 - Other: Taylor, DA1 Ann
Detective Maskell bring the weapon that was fired.

08:59:49 - State Attorney:
Officer Maskell doesn't have it any longer, I do and I don't know if I will

09:00:25 - State Attorney:
No.

09:00:31 - Judge: Luster, John
Please bring it. Return the jury - jury present and in place.

09:03:15 - Other: Clerk, Kathy Booth
Swears #7

09:03:38 - Other: Robnett, #7 Charles
- ISP - EX #46C is an exact copy of my diagram

09:05:52 - Other: Robnett, #7 Charles
Describes #38, #39, #45 to jury - The blood smear is about 6' and is about 3'

09:10:59 - Other: Robnett, #7 Charles
away from Ms. Larsen.

09:11:12 - Other: Robnett, #7 Charles
XE - Trooper since 1998 - before that I was a kitchen remodeling contractor.

09:11:40 - Other: Robnett, #7 Charles
I'm pretty good at taking accurate measurements. Explains POST crash

09:12:33 - Other: Robnett, #7 Charles
investigation of 40 hours - I took the advanced crash investigation course

09:13:40 - Other: Robnett, #7 Charles
1 year later. I went to a crash reconstruction school in 2001. A fatality

09:15:59 - Other: Robnett, #7 Charles
or a crash involving a police officer is a "class A crash" and for these we

09:16:15 - Other: Robnett, #7 Charles
do more paperwork. Explains. I am aware that the Subaru was moved after the

09:18:49 - Other: Robnett, #7 Charles
accident and before I got there. Explains acceleration, skuff and yaw

09:22:27 - Other: Robnett, #7 Charles
marks. EX #23 - I do not see a yaw mark. There is a mark across the center

09:22:44 - Other: Robnett, #7 Charles
line. I would say this was an acceleration mark - shows jury. I took all

09:24:18 - Other: Robnett, #7 Charles
the measurements myself with the help of Trooper Dustin (?). I reviewed his

09:24:55 - Other: Robnett, #7 Charles
notes to assure they were accurate. He did hold one end of the tape on

09:25:16 - Other: Robnett, #7 Charles
occasin. This Trooper has been trained as I have and he helped place one end

09:26:02 - Other: Robnett, #7 Charles
f the measurements as I placed the other. Explains the way the measurements

09:27:10 - Other: Robnett, #7 Charles
were taken. I did not do a drag factor because it began raining. The drag

09:27:57 - Other: Robnett, #7 Charles
factor will be different on wet, dry, icy, new pavement, etc. When I got

09:28:42 - Other: Robnett, #7 Charles
there the roadway was damp but not wet. Refers to Traffic Accident

09:29:34 - Other: Robnett, #7 Charles
Investigation book - reads definition of co-efficient defination factor.

09:30:54 - Other: Robnett, #7 Charles

When I go to a scene what is on the roadway is critical to my investigation.

09:31:07 - Other: Robnett, #7 Charles
I am aware that other vehicles drove through the scene. I believe there was

09:31:27 - Other: Robnett, #7 Charles
a blue pickup and 2 ambulances that drove through. I was not aware that

09:31:42 - Other: Robnett, #7 Charles
several other vehicles made turn around movements in the driveway but it

09:31:52 - Other: Robnett, #7 Charles
would not have made a difference in this case. I didn't take measurements

09:33:03 - Other: Robnett, #7 Charles
from tire to tire on the defendants vehicle. I referred to Trooper Daly's

09:33:22 - Other: Robnett, #7 Charles
measurements which he took from outside to outside. He also measure the

09:33:36 - Other: Robnett, #7 Charles
subaru outside to outside. My measurements on roadway would be inside to

09:33:56 - Other: Robnett, #7 Charles
inside. I looked at the blazer myself several weeks after the incident ad

09:34:14 - Other: Robnett, #7 Charles
the impound yard. I have never taken a cast or mold of a tire. I used marks

09:35:03 - Other: Robnett, #7 Charles
and debris in the roadway. Maintaining the integrity of the scene is

09:35:41 - Other: Robnett, #7 Charles
critical and it was done as soon as could be. re: persons present upon

09:36:32 - Other: Robnett, #7 Charles
arrival at the scene. The 2 ambulances had left the scene when I arrived. I

09:37:19 - Other: Robnett, #7 Charles
don't know how they got in or out of the scene. The debris field would show

09:38:07 - Other: Robnett, #7 Charles
the appropriate place the crash occurred. Explains corresponding damage. I

09:38:57 - Other: Robnett, #7 Charles
did not put the two vehicles back together at the angle that I think they

09:39:10 - Other: Robnett, #7 Charles
hit. A base line is important. My scale is 1" = 6' - this worked best for

09:40:14 - Other: Robnett, #7 Charles
the paper I used. DEF EX G- copy of my field notes - looks to be omplete.

09:41:34 - Other: Taylor, DA1 Ann
Motion to Admit DEF EX G

09:41:43 - State Attorney:
No objection

09:41:47 - Judge: Luster, John
DEF EX G is admitted

09:42:01 - Other: Robnett, #7 Charles
EX G and EX H - identifies measurements for marks near the subaru going into

09:46:00 - Other: Robnett, #7 Charles
te driveway. Explains the difference in subjective and objective

09:47:59 - Other: Robnett, #7 Charles
investigation The distance of the scene was just under 200'. My base line

09:48:52 - Other: Robnett, #7 Charles
was 200' The east bound lane of Scarcello varried - when I took my

09:49:46 - Other: Robnett, #7 Charles
measuremens I took 4 or 5 measurements all the way down. I did record the

09:50:12 - Other: Robnett, #7 Charles
width in those 4 or 5 places. The E. bound line 13'5" the west bound lane

09:50:30 - Other: Robnett, #7 Charles
14'2" or the total 27'7". The blazer 15'4" and 16' long - the subaru was

09:50:56 - Other: Robnett, #7 Charles
about 15' long. When I measured the tire marks I did point by point and then

09:52:01 - Other: Robnett, #7 Charles
connected the dots. Shows on diagram where the marks in the driveway become

09:53:35 - Other: Robnett, #7 Charles
sid marks. The back up marks are made by the blazer. Explains acceleration

09:54:57 - Other: Robnett, #7 Charles
scuff marks. I agree that the subaru was moving slowly when the subaru and

09:56:58 - Other: Robnett, #7 Charles
blazer collided. My testimony as to placement of the Honda is different than

09:58:57 - Other: Robnett, #7 Charles
my testimony in the first preliminary hearing. The Honda and Blazer contact

09:59:20 - Other: Robnett, #7 Charles
was front end to front end. There was debris from some vehicle near the

09:59:41 - Other: Robnett, #7 Charles
center line. PL EX #16 - shows resting place of the subaru and debris on

10:02:43 - Other: Robnett, #7 Charles
roadway. My investigation indicates that the subaru was 3-6' further into

10:03:31 - Other: Robnett, #7 Charles
the driveway. EX #45 shows the damage of the Honda #23. The blazer's

10:06:43 - Other: Robnett, #7 Charles
damage was to the left side and damage to the Honda was . . . uses EX #70

10:09:22 - Other: Robnett, #7 Charles
an #71 showing damage to blazer frontal view. Def EX #1

10:11:41 - Other: Taylor, DA1 Ann
Motion to Admit EX 1

10:11:56 - Judge: Luster, John
Admit EX 1

10:12:13 - Other: Robnett, #7 Charles
These photos show that it was more drivers side to drivers side with a light

10:12:30 - Other: Robnett, #7 Charles
angle. The front end of the Honda sticks out further than the tire. The

10:14:08 - Other: Robnett, #7 Charles
angle of the Honda was similar to the subaru but not the same angle. When I

10:16:13 - Other: Robnett, #7 Charles
was at the scene the three marks were not as dark as they are on paper. In

10:16:42 - Other: Robnett, #7 Charles
all these marks here (indicates) I cannot be sure which marks are from which

10:17:06 - Other: Robnett, #7 Charles
vehicle.

10:17:25 - Judge: Luster, John
Recess - admonishes jury

10:17:43 - Operator
Stop recording:

10:50:07 - Operator
Recording:

10:50:07 - Record

Ellington, Jonathan Wade

10:50:09 - Judge: Luster, John

Back in session - return the jury - jury present and in place.

10:51:06 - Other: Robnett, #7 Charles

XE cont - I don't know what direction the tires on the Honda was pointed at

10:51:51 - Other: Robnett, #7 Charles

at the time of impact nor did I know if the Honda was still moving forward.

10:52:14 - Other: Robnett, #7 Charles

If the Honda was moving forward at the time of impact it would not change my

10:53:46 - Other: Robnett, #7 Charles

diagram. EX #20 and #19 - the marks on side of the Honda occurred from the

10:55:16 - Other: Robnett, #7 Charles

bumper of the blazer. EX #20 - I think the mark came from the tire. I read

10:56:04 - Other: Robnett, #7 Charles

that when Joleen got out of the car it was still moving. I do have back up

10:56:23 - Other: Robnett, #7 Charles

marks for the blazer and then it went around the Honda and struck Ms. Larsen.

10:56:53 - Other: Robnett, #7 Charles

There is indication that the blazer was accelerating as it reversed from the

10:57:42 - Other: Robnett, #7 Charles

Honda. I recall reading that Ms. Larsen was running across the road when she

10:58:18 - Other: Robnett, #7 Charles

was struck.

10:58:25 - Other: Robnett, #7 Charles

I was brought in to do an accident reconstruction. I am aware that another

10:58:43 - Other: Robnett, #7 Charles

ISP officer was brought in to also to an accident reconstruction. Trooper

10:59:06 - Other: Robnett, #7 Charles

Daly has had a lot more experience. My change in testimony is due to me

10:59:21 - Other: Robnett, #7 Charles

seeing things from another different perspective. My first testimony was due

10:59:44 - Other: Robnett, #7 Charles

to incomplete information. My analysis was not complete at that time. I

11:00:06 - Other: Robnett, #7 Charles

have seen the video of the incident. There are some vehicles driving

11:00:30 - Other: Robnett, #7 Charles

through the scene on the video. I don't have any hard evidence indicating

11:00:43 - Other: Robnett, #7 Charles

where Ms. Larsen was when she was struck

11:00:52 - Judge: Luster, John

Witness excused

11:01:24 - Other: Taylor, DA1 Ann

Ask the witness remain on call - he's under our subpoena also

11:01:39 - State Attorney:

Can he remain?

11:01:45 - Judge: Luster, John

Yes, consistent with my earlier ruling

11:01:55 - State Attorney:

Calls #8

11:02:05 - Other: Clerk, Kathy Booth

Swears

11:02:46 - Other: Daly, #8 Sean Michael
ISP - re: duties, training and experience. I have been with detectives for

11:03:04 - Other: Daly, #8 Sean Michael
5 years and prior to that patrol for 17 1/2 years. re: prior law

11:03:20 - Other: Daly, #8 Sean Michael
enforcement - first accident training was in 1977, then military, POST 1981,

11:04:17 - Other: Daly, #8 Sean Michael
1984 and 1990 and refresher courses periodically and I have taught a short

11:04:55 - Other: Daly, #8 Sean Michael
segment at the State Academy in Boise. I taught the basic accident

11:05:14 - Other: Daly, #8 Sean Michael
investigation course at NIC for 5 years. I was a field training officer for

11:05:58 - Other: Daly, #8 Sean Michael
15 years. I began accident reconstruction in the field since 1994. I have

11:08:55 - Other: Daly, #8 Sean Michael
reconstructed a number of accidents involving fatalities. I have reconstructed

11:09:14 - Other: Daly, #8 Sean Michael
near 100 fatal accidents myself and have assisted other officers with a

11:09:49 - Other: Daly, #8 Sean Michael
number also. Contact damage is where two vehicles come in contact. Induced

11:11:40 - Other: Daly, #8 Sean Michael
damage is a fender buckling, etc.,. Reaction time plays a part in damage.

11:12:19 - Other: Daly, #8 Sean Michael
You can build an accident backwards. Explains and provides an example. I

11:13:32 - Other: Daly, #8 Sean Michael
have testified approximately 5 times as an accident reconstructionist - some

11:13:50 - Other: Daly, #8 Sean Michael
have been fatalities and some have not. At some point I reviewed all the

11:14:11 - Other: Daly, #8 Sean Michael
information via field notes, photos, looked at vehicles and revisited the scene

11:14:37 - Other: Daly, #8 Sean Michael
several times. I took Trooper Robnett's field notes and diagram and I added

11:15:02 - Other: Daly, #8 Sean Michael
some information I noticed on the scene but my information is not to scale.

11:15:23 - Other: Daly, #8 Sean Michael
EX #146 - shows items added that are not to scale.

11:18:52 - State Attorney:
Motion to Admit EX #146

11:19:02 - Other: Daly, #8 Sean Michael
Voor Dire - Re: straight line drawn I have no degree re; photo

11:20:53 - Other: Daly, #8 Sean Michael
measurements.

11:21:06 - Other: Taylor, DA1 Ann
Objection

11:21:16 - Other: Daly, #8 Sean Michael
Question by Court - re: visual estimation

11:22:10 - Judge: Luster, John
Admit EX #146

11:23:08 - Other: Daly, #8 Sean Michael
There was a time I took photos of the Honda and Subaru and the impound yard.

11:23:27 - Other: Daly, #8 Sean Michael

I was called by Detective Maskell and helped him process them. During this
11:23:48 - Other: Daly, #8 Sean Michael
time photos were taken of the blazer. EX#86, #87, #88 - photos of blazer -
11:24:26 - Other: Daly, #8 Sean Michael
describes photos #89, #90 #91, #92, #93, #94, #95, #96 - describes photos
11:26:14 - Other: Daly, #8 Sean Michael
take 1/3/6. These are accurate photos of the blazer.
11:26:27 - State Attorney:
Motion to Admit #86 - #96.
11:26:43 - Other: Taylor, DA1 Ann
No objection to any but #95 - we can be heard later.
11:26:54 - Judge: Luster, John
EX #86 - #96 EXCLUDING #95 - can be admitted
11:27:22 - Other: Daly, #8 Sean Michael
#108, #109
11:27:36 - Other: Taylor, DA1 Ann
No objection
11:27:41 - Judge: Luster, John
Admit #108, #109.
11:27:52 - Other: Daly, #8 Sean Michael
I did start and drive the blazer in late January of this year. I wanted to
11:28:05 - Other: Daly, #8 Sean Michael
see if the vehicle was in 4X4 at the time of the accident. I discovered the
11:29:13 - Other: Daly, #8 Sean Michael
vehicle was in 4X4 at the time of the incident.
11:29:32 - Judge: Luster, John
Sustained to at the time incident.
11:29:48 - Other: Daly, Sean
re: procedure for impounding a vehicle. When we arrived none of the seals
11:30:11 - Other: Daly, Sean
had been broken. I found the vehicle to be in 4X4 and I moved it to 2 wheel
11:31:24 - Other: Daly, Sean
drive. I drove the vehicle to a corner of the parking lot and attempted to
11:31:37 - Other: Daly, Sean
make acceleration/skid marks. I wanted to see which tire spun when it was in
11:31:59 - Other: Daly, Sean
2 wheel drive and in 4 wheel drive. In 2 wheel the right rear tire was the
11:32:51 - Other: Daly, Sean
only wheel that spun. I put it into 4 wheel drive in another spot I noticed
11:33:11 - Other: Daly, Sean
that the right rear spun - left spun a little and the right front also spun -
11:33:27 - Other: Daly, Sean
EX #130, #131, #132
11:34:41 - State Attorney:
Motion to Admit #130 - #133
11:34:58 - Other: Taylor, DA1 Ann
Objection
11:35:03 - Judge: Luster, John
Overruled - Admit #130 - #133.
11:37:08 - Other: Daly, #8 Sean Michael
re: measurements of the blazer - EX #130 - #033 - shows markings made. I

11:41:16 - Other: Daly, #8 Sean Michael
have been working on cars for 36 years - since I was 12 years old.

11:44:20 - Other: Daly, #8 Sean Michael
voire Dire - I didn't take apart the steering mechanism of the blazer.

11:45:45 - Other: Daly, #8 Sean Michael
Direct - I saw no problem with the steering mechanism or the brakes - they

11:46:04 - Other: Daly, #8 Sean Michael
woked The blazer weights approximately 4300 lbs. Detective Swanson took

11:48:19 - Other: Daly, #8 Sean Michael
photos of hte subaru - I was tere #110 r front subaru, #111 driver side

11:48:36 - Other: Daly, #8 Sean Michael
subaru #112 another angle driver side. #117 another angle, #118 photo ID

11:49:05 - Other: Daly, #8 Sean Michael
DL of Ms. Larsen - I found it inside the purse of Ms. Larsen in the subaru

11:49:21 - Other: Daly, #8 Sean Michael
(#119) #113 photo - subaru #114 subaru #115, #116 aubaru - XXUErw photos

11:50:13 - State Attorney:
Motion to Admit #110 #119

11:50:27 - Other: Taylor, DA1 Ann
No objection to all but #339

11:50:38 - Judge: Luster, John
#110 - #118 admitted.

11:51:15 - Other: Daly, #8 Sean Michael
At one point the vehicle was moved into the enclosed space but I don't have a

11:51:29 - Other: Daly, #8 Sean Michael
specific date - it was February. he space is on the property of the

11:51:41 - Other: Daly, #8 Sean Michael
Sheriff's department - I took photos that day. #120, #212, ##122, #123,

11:52:28 - Other: Daly, #8 Sean Michael
#124, #125, #126, #127, #128, #129

11:53:00 - State Attorney:
Pa motion to admit #120 - #129

11:53:15 - Other: Taylor, DA1 Ann
No objection

11:53:19 - Judge: Luster, John
#120 - #129 admitted

11:53:31 - Other: Daly, #8 Sean Michael
re: power difference between the blazer and Honra. I measured

11:57:17 - Other: Daly, #8 Sean Michael
re: person sitting in Honda and eye level.

12:00:50 - Judge: Luster, John
Recess for lunch - admonishes jury - with jury gone let's discuss #95 and

12:01:27 - Judge: Luster, John
#119

12:01:39 - Other: Taylor, DA1 Ann
Re: objections

12:02:25 - State Attorney:
Responds

12:06:43 - Judge: Luster, John
Sustain objection -

12:07:50 - State Attorney:

I'll provide more informaiton
12:08:02 - Other: Daly, #8 Sean Michael
Re: striation marks
12:09:52 - Judge: Luster, John
Comments - Admit EX #95 - Sustain objection as to relevance re: #119
12:11:44 - Judge: Luster, John
Recess to 1:15 pm
12:11:53 - Operator
Stop recording:
13:27:52 - Operator
Recording:
13:27:52 - Record
Ellington, Jonathan Wade
13:27:52 - Judge: Luster, John
Back in session - I've been advised that the detective's father has taken ill
13:28:07 - Judge: Luster, John
and the deputy is at the hospital and PA will go out-of-order
13:28:28 - Other: Taylor, DA1 Ann
No objection
13:28:33 - Judge: Luster, John
Additionally - advised that juror Craft had an issue to be dsicussed -
13:28:57 - Judge: Luster, John
return that juror only
13:29:28 - Other: Craft, Juror Trevor
I have exactly the same type of blazer as the defendant and (2) my
13:29:51 - Other: Craft, Juror Trevor
mother-in-law is the receptionist at a therapist office and has almost daily
13:30:11 - Other: Craft, Juror Trevor
cntact with the driver of the Honda. She told me that this weekend and I
13:30:30 - Other: Craft, Juror Trevor
told her to stop and would not discuss the case - she really didn't say
13:30:40 - Other: Craft, Juror Trevor
anything. -
13:31:11 - Other: Craft, Juror Trevor
XE I got a feeling from her but I would definately stick with what was
13:31:38 - Other: Craft, Juror Trevor
said. I can be fair and impartial.
13:31:58 - Judge: Luster, John
Return the balance of the jurors - jury present and in place.
13:33:07 - Judge: Luster, John
Unable to finish with Detecive Daly's testimony at this time as something
13:33:23 - Judge: Luster, John
unexpected came up. We'll take a witness out-of-order
13:33:34 - State Attorney:
Calls #9
13:34:08 - Other: Clerk, Kathy Booth
Swears #9
13:34:22 - Other: Larsen, #9 Joel Rodney
I live in Athol - 11 acres - log house - before Jan of 2006 I lived there
13:34:51 - Other: Larsen, #9 Joel Rodney
with my wife, Jamie (14) and Joleen. Holeen lived with us until 1 - 1 1/2

13:35:10 - Other: Larsen, #9 Joel Rodney
months ago. Jovonne is 21 and has a 4 year old son Zachary. I grew up om
13:35:43 - Other: Larsen, #9 Joel Rodney
Battleground, WA NE of Vancouver. WA. Summer of our junior year we started
13:36:21 - Other: Larsen, #9 Joel Rodney
gong out and got married in 1983 after she graduated from cosmetology school.
13:36:39 - Other: Larsen, #9 Joel Rodney
We were married in 1983. The three girls are our girls. In 1989 we moved
13:37:12 - Other: Larsen, #9 Joel Rodney
to Athol and have lived in the same house ever since. Vonette was a
13:37:34 - Other: Larsen, #9 Joel Rodney
hairstresser since 19 years old. She continued doing that when we moved to
13:37:50 - Other: Larsen, #9 Joel Rodney
Idaho working at Center Beauty Supply across the fairground. She worked
13:38:07 - Other: Larsen, #9 Joel Rodney
part-time. We do everything outdoors - hunting, fishing, 4-wheelers, etc.
13:38:33 - Other: Larsen, #9 Joel Rodney
She was my best friend. I'd go hunting with my wife.
13:39:45 - Other: Schwartz, DA3 Christoph
Objection - leading
13:39:57 - Other: Larsen, #9 Joel Rodney
I have a 44 revolver that I've had since 1991. I had one before that was
13:40:21 - Other: Larsen, #9 Joel Rodney
stolen from my vehicle. When I bought the current 44 it cost about \$450.
13:41:01 - Other: Larsen, #9 Joel Rodney
The pistol is a stainless steel gun. I carry it with me all the time in the
13:41:23 - Other: Larsen, #9 Joel Rodney
woods - usually in a fanny pack.
13:42:39 - Other: Larsen, #9 Joel Rodney
I drive truck for a rendering company and have done this for 20 years. This
13:42:53 - Other: Larsen, #9 Joel Rodney
is physically demanding and last year I tore my left bicep off - explains.
13:45:14 - Other: Larsen, #9 Joel Rodney
9/92 I got a CCW per mit out of Washington. There are times I'd leave a
13:45:32 - Other: Larsen, #9 Joel Rodney
weapon in my vehicle. Until this I didn't spend much time in town.
13:48:23 - Other: Larsen, #9 Joel Rodney
New Years Eve 2005 I went shed horn hunting/hiking that day. I'm still off
13:49:24 - Other: Larsen, #9 Joel Rodney
work with my arm surgery. Zack came and spent New Years Eve with us. Joleen
13:50:20 - Other: Larsen, #9 Joel Rodney
went to spend the night with Jovonne. We went to bed about 9:00 pm. My wife
13:50:40 - Other: Larsen, #9 Joel Rodney
went to bed about the same time. We might have fallen to sleep before that.
13:50:57 - Other: Larsen, #9 Joel Rodney
I remember waking up about 11:00 or so and going to bed. I'm sure I was up
13:51:14 - Other: Larsen, #9 Joel Rodney
by 6:00 am and Vonette got up shortly. About 10:30 or 11:00 Joleen called
13:51:47 - Other: Larsen, #9 Joel Rodney
us, she was very scared, upset and talking really fast saying that a guy . .
13:52:04 - Other: Larsen, #9 Joel Rodney

13:52:26 - Other: Larsen, #9 Joel Rodney
She said that someone was following them - stopped - threatened them- hit the

13:52:46 - Other: Larsen, #9 Joel Rodney
car with his fist and said she'd followed 911. She said she followed him and

13:53:08 - Other: Larsen, #9 Joel Rodney
then tried to run him off the road, then followed him again. She said

13:53:23 - Other: Larsen, #9 Joel Rodney
something about 3-4 driveways. I told her to shut up - didn't need to hear

13:53:52 - Other: Larsen, #9 Joel Rodney
all the details, asked her where she was - i heard Brunner, Ramsey and

13:54:08 - Other: Larsen, #9 Joel Rodney
Seasons so I didn't know exactly where she was. The wife and I went outside

13:54:23 - Other: Larsen, #9 Joel Rodney
and left in her Burgandy subaru. This was a 5-speed car and it was hard for

13:54:46 - Other: Larsen, #9 Joel Rodney
m to drive with my arm in a sling. I had her drive. All our autos but my

13:55:36 - Other: Larsen, #9 Joel Rodney
big pickup are stick shifts. I had my gun in the car having gone shed

13:55:58 - Other: Larsen, #9 Joel Rodney
hunting the day before. The gun was loaded with 5 rounds in and on an empty

13:56:25 - Other: Larsen, #9 Joel Rodney
cylinder. I had food in the fanny pack I usually keep it in so I had just

13:56:55 - Other: Larsen, #9 Joel Rodney
put it under the passenger seat. We left to go to the girls about

13:57:14 - Other: Larsen, #9 Joel Rodney
11:15 am - I'm just guessing on the time.

13:57:36 - Other: Larsen, #9 Joel Rodney
We both got in the car and left. I thought we'd just go backwards of what

13:57:51 - Other: Larsen, #9 Joel Rodney
she was saying - re: direction of travel. When we got to the T-intersection

13:58:36 - Other: Larsen, #9 Joel Rodney
at Brunner we looked to the right and saw the girls automobile. Shows on EX

13:59:44 - Other: Larsen, #9 Joel Rodney
#2 where we met up with the girls and talked to them. We talked to them about

14:00:46 - Other: Larsen, #9 Joel Rodney
5 minutes and went right back to where we had come from because they had told

14:01:03 - Other: Larsen, #9 Joel Rodney
me he was in a specific area (shows on EX #2). We drove past the area the

14:02:22 - Other: Larsen, #9 Joel Rodney
girls said he was. When we went back there we saw some people at the corner

14:02:43 - Other: Larsen, #9 Joel Rodney
o Wier and Brunner looking at donkeys. I was going to tell the officer where

14:02:58 - Other: Larsen, #9 Joel Rodney
he was at. I thought he'd be at one house because there are a lot of junk

14:03:15 - Other: Larsen, #9 Joel Rodney
cars there and it's easy to see into the other houses.

14:03:35 - Other: Schwartz, DA3 Christophr
Objection

14:03:39 - Judge: Luster, John
Sustained

14:03:49 - Other: Larsen, #9 Joel Rodney
After I talked to the people I looked toward the girls and could see the
14:04:04 - Other: Larsen, #9 Joel Rodney
officer with the girls. I drove back down there and before we got down there
14:04:18 - Other: Larsen, #9 Joel Rodney
the deputy turned around and went through the intersection. The officer
14:04:48 - Other: Larsen, #9 Joel Rodney
turned left, the other way. The girls told me they told him the right way to
14:05:05 - Other: Larsen, #9 Joel Rodney
turn and they didn't know why he went the other way. My wife and I went back
14:05:42 - Other: Larsen, #9 Joel Rodney
to the direction we had just come from. I went back down to the house where
14:06:00 - Other: Larsen, #9 Joel Rodney
I thought he might be - we stopped to the house on the other side and was
14:06:35 - Other: Larsen, #9 Joel Rodney
going to ask permission to walk the fence line to see if he was on the
14:06:49 - Other: Larsen, #9 Joel Rodney
adjoining property. A bunch of dogs came out and at the same time a vehicle
14:07:42 - Other: Larsen, #9 Joel Rodney
started up really loud in the same direction and I looked underneath pine
14:08:00 - Other: Larsen, #9 Joel Rodney
trees and could see a gold blazer pull out. I went back into the car and told
14:08:15 - Other: Larsen, #9 Joel Rodney
Vonette that he was over there. We backed out of the driveway and she pulled
14:08:31 - Other: Larsen, #9 Joel Rodney
toward the driveway and he pulled out - I looked and he had no front license
14:08:57 - Other: Larsen, #9 Joel Rodney
plate. The wife turned and pulled in the same driveway he had just come out
14:09:42 - Other: Larsen, #9 Joel Rodney
of and she had to back up again to go follow the blazer. He was going south
14:10:21 - Other: Larsen, #9 Joel Rodney
on Ramsey past Brunner. When he went past them the girls took off following
14:10:46 - Other: Larsen, #9 Joel Rodney
him. Neither me or the wife had cell phones until after this happened. We
14:11:10 - Other: Larsen, #9 Joel Rodney
followed south and we were going 60 or so on the corners and 80 or so on the
14:11:27 - Other: Larsen, #9 Joel Rodney
straight. I was able to see the girls. I wasn't going to stop and leave my
14:11:47 - Other: Larsen, #9 Joel Rodney
daughters. Vonette was still driving. Close to Scarcello he started to turn
14:12:14 - Other: Larsen, #9 Joel Rodney
- it only turns right and he turned right and the girls did the same. I
14:12:52 - Other: Larsen, #9 Joel Rodney
knew the girls were on the cell phone calling 911 again. I was waiting for an
14:13:28 - Other: Larsen, #9 Joel Rodney
officer - I knew that at any time there had to be one coming. From seeing
14:13:44 - Other: Larsen, #9 Joel Rodney
the officer turn off wrong and seeing the blazer it had to be about 5
14:14:03 - Other: Larsen, #9 Joel Rodney
minutes. When we came up we saw the girls brake lights and I could see he had
14:14:37 - Other: Larsen, #9 Joel Rodney

stopped and he pulled into the pull off and slid around and was turning
14:14:49 - Other: Larsen, #9 Joel Rodney
around I told the wife to get around the girls and block him from hitting
14:15:27 - Other: Larsen, #9 Joel Rodney
the girls. I wanted to protect my girls. Shows on EX #5 where the blazer
14:16:20 - Other: Larsen, #9 Joel Rodney
went. The girls said that
14:16:55 - Other: Schwartz, DA3 Christophr
Objection
14:16:59 - Judge: Luster, John
Sustained
14:17:09 - Other: Larsen, #9 Joel Rodney
The girls stopped and we went on past them and got between he and the girls.
14:17:21 - Other: Larsen, #9 Joel Rodney
As we went around the girls and pulled up we were all but stopped when he
14:17:36 - Other: Larsen, #9 Joel Rodney
came around and hit us in the front left corner. The driver side front in
14:18:29 - Other: Larsen, #9 Joel Rodney
front of the door is where we were hit. The blazer was facing down the road
14:18:49 - Other: Larsen, #9 Joel Rodney
at the time we were hit.
14:19:32 - Other: Schwartz, DA3 Christophr
Objection
14:19:36 - Judge: Luster, John
Sustained
14:19:45 - Other: Larsen, #9 Joel Rodney
We were both in the front seats when hit and he came around us continuing to
14:20:21 - Other: Larsen, #9 Joel Rodney
go around us toward the girls. He was not leaving. He could have gone
14:20:36 - Other: Larsen, #9 Joel Rodney
straight ahead and left but he chose to come around us
14:21:07 - Other: Schwartz, DA3 Christophr
Objection
14:21:12 - Judge: Luster, John
Sustained
14:21:18 - Other: Schwartz, DA3 Christophr
Object to PA using diagram (#46)
14:21:29 - Judge: Luster, John
comments
14:21:41 - Other: Larsen, #9 Joel Rodney
He came around us and the correct lane of travel was open. He kept turning
14:22:40 - Other: Larsen, #9 Joel Rodney
left. The girls were in the correct lane. The blazer accelerated as it
14:23:17 - Other: Larsen, #9 Joel Rodney
approched the girls vehicle. It was a very loud vehicle. He turned around
14:23:54 - Other: Larsen, #9 Joel Rodney
us, squared up with the girls and just punched it. The blazer jumped up on
14:24:49 - Other: Larsen, #9 Joel Rodney
top of the girls - the front wheels came up off the ground and up on the
14:25:01 - Other: Larsen, #9 Joel Rodney
girls. All I could think was that this guy was smashing my girls - he

14:25:16 - Other: Larsen, #9 Joel Rodney
continued to have it floored and was pushing the girls. My wife was

14:25:31 - Other: Larsen, #9 Joel Rodney
screaming - we thought he was killing our kids. All we could see was the

14:25:43 - Other: Larsen, #9 Joel Rodney
back of the blazer and I couldn't believe that the Honda held up as far as it

14:25:56 - Other: Larsen, #9 Joel Rodney
did. He continue to push until he couldn't push any more.

14:26:18 - Other: Schwartz, DA3 Christoph
Objection

14:26:22 - Judge: Luster, John
Sustained

14:26:30 - Other: Larsen, #9 Joel Rodney
I saw him when he first came out of Brunner and saw him when he hit us.

14:26:46 - Other: Larsen, #9 Joel Rodney
Identifies defendant as the driver. We both got out of the car and I

14:27:15 - Other: Larsen, #9 Joel Rodney
grabbed my gun and ran back to try and protect my daughters. I was going to

14:27:27 - Other: Larsen, #9 Joel Rodney
stop him from killing my girls. I thought he was totally crushing them - it

14:27:40 - Other: Larsen, #9 Joel Rodney
was up on top of it. This was the first time I grabbed the gun. When I ran

14:28:02 - Other: Larsen, #9 Joel Rodney
back toward the girls car - at first he was still shoving it and then he put

14:28:16 - Other: Larsen, #9 Joel Rodney
it in reverse. My wife was running also. I was trying to go to the drivers

14:28:38 - Other: Larsen, #9 Joel Rodney
side - I was going to stop him. He threw it (blazer) in reverse and came

14:29:17 - Other: Larsen, #9 Joel Rodney
back off the girls - couldn't get around to the drivers side at that time - I

14:29:32 - Other: Larsen, #9 Joel Rodney
hit the back of his vehicle - I was trying to not go under the back tire.

14:30:41 - Other: Larsen, #9 Joel Rodney
The blazer backed up just enough and turned just enough to get off the girls

14:31:01 - Other: Larsen, #9 Joel Rodney
and start forward. You could not see in the back windows. The first thing I

14:31:42 - Other: Larsen, #9 Joel Rodney
could see was the dash as there is no tinting in the drivers window. I saw

14:31:57 - Other: Larsen, #9 Joel Rodney
his hand on the gear shift and smash it down and accelerating. The motor

14:32:13 - Other: Larsen, #9 Joel Rodney
took off again. At this time I was running up the passenger side of the

14:32:31 - Other: Larsen, #9 Joel Rodney
blazer. I pulled up and had the gun pointed at him through the passenger

14:32:41 - Other: Larsen, #9 Joel Rodney
window. His vehicle was pointed forward. I put the gun up and I had it on

14:32:56 - Other: Larsen, #9 Joel Rodney
him and all I could see was the white car and girls on the other side of him.

14:33:18 - Other: Larsen, #9 Joel Rodney
He never looked at me - he was just looking forward staring at my wife - she

14:34:10 - Other: Larsen, #9 Joel Rodney

was just crossing the center line. I shot through the front fender of the
14:34:36 - Other: Larsen, #9 Joel Rodney
motor.
14:34:37 - General:
Time stamp
14:34:38 - General:
Time stamp
14:34:38 - General:
Time stamp
14:34:39 - General:
Time stamp
14:34:46 - Other: Larsen, #9 Joel Rodney
14:34:47 - General:
Time stamp
14:34:52 - Other: Larsen, #9 Joel Rodney
14:34:55 - General:
Time stamp
14:35:00 - Other: Larsen, #9 Joel Rodney
I was leveled on him and could have shot at him. My wife was about 20' in
14:35:36 - Other: Larsen, #9 Joel Rodney
front of the bazer and she was running across the road to get to the girls.
14:35:58 - Other: Larsen, #9 Joel Rodney
I shot into the front passenger side of the vehicle for some chance at
14:36:23 - Other: Larsen, #9 Joel Rodney
gettin him to stop. It didn't work. He was staring at the wife and he
14:36:59 - Other: Larsen, #9 Joel Rodney
turned left and continued to turn left until he hit her dead center and then
14:37:12 - Other: Larsen, #9 Joel Rodney
he turned and went off down the road. My wife's head hit the hood of the
14:38:01 - Other: Larsen, #9 Joel Rodney
truck with her hands up (demonstrates) He just kept turning left - she
14:38:15 - Other: Larsen, #9 Joel Rodney
wasn't going to make it - you could tell. He just ran her over. I could
14:38:42 - Other: Larsen, #9 Joel Rodney
see the top of her shoulders, neck, head and hands over the top of the
14:38:55 - Other: Larsen, #9 Joel Rodney
blazer. Her head hit right top of the hood in the center. His blazer was
14:39:10 - Other: Larsen, #9 Joel Rodney
totally floored and he never even let off. He just floored it right over the
14:39:28 - Other: Larsen, #9 Joel Rodney
top of my wife. I couldn't believe that someone was doing this to my family.
14:39:43 - Other: Larsen, #9 Joel Rodney
She went straight back onto the ground. The next thing was him going over
14:40:18 - Other: Larsen, #9 Joel Rodney
he and her head. The best way I can describe it as if you put a log over the
14:40:48 - Other: Larsen, #9 Joel Rodney
road an drive over the top of it. She was rolling underneath and he had it
14:41:02 - Other: Larsen, #9 Joel Rodney
so floored that when he went over her he spit her out and spun her around the
14:41:18 - Other: Larsen, #9 Joel Rodney
other way. After he came back into the correct lane - . He ran over my

14:41:55 - Other: Larsen, #9 Joel Rodney
wife in the wrong lane of travel and - he went left, ran over, came back into
14:42:29 - Other: Larsen, #9 Joel Rodney
the lane in 20 yards or so. I emptied the rest of my gun at him. I was
14:43:15 - Other: Larsen, #9 Joel Rodney
trying to hit him but I couldn't. He was going down the hill when I shot the
14:43:34 - Other: Larsen, #9 Joel Rodney
last time. I was still running - as he was running over her I was running
14:44:13 - Other: Larsen, #9 Joel Rodney
to her. When I was done shooting I went back to her. As I ran past her I
14:44:31 - Other: Larsen, #9 Joel Rodney
looked at her and knew she was dead. Her head was smashed and her eyes were
14:44:47 - Other: Larsen, #9 Joel Rodney
wide open and there was blood - a 6" path across the road. The daughters
14:45:00 - Other: Larsen, #9 Joel Rodney
were screaming. My daughters ran up - Joleen was screaming and Jovonne began
14:45:29 - Other: Larsen, #9 Joel Rodney
puking. None of us could touch her.
14:45:42 - Other: Schwartz, DA3 Christoph
Object
14:45:47 - Judge: Luster, John
Sustained
14:45:51 - Judge: Luster, John
Recess - admonishes jury.
14:46:01 - Operator
Stop recording:
15:02:22 - Operator
Recording:
15:02:22 - Record
Ellington, Jonathan Wade
15:02:22 - Judge: Luster, John
Back in session - the jury is not present
15:02:38 - Other: Schwartz, DA3 Christoph
We have some questions about how the court wants us to proceed with the
15:03:03 - Other: Schwartz, DA3 Christoph
weapon
15:03:13 - Judge: Luster, John
Explains procedure
15:03:25 - Other: Schwartz, DA3 Christoph
Motion for mistrial - as PA continued to use the phrase "ran over your wife"
15:03:47 - Other: Schwartz, DA3 Christoph
I objected - the court sustained the objection and the very next question was
15:04:07 - Other: Schwartz, DA3 Christoph
the same as he stared at the counsel table and smiled.
15:04:22 - State Attorney:
Deny motion
15:04:27 - Judge: Luster, John
Comments - deny motion for mistrial
15:06:52 - Judge: Luster, John
Return the jury - jury present and in place
15:08:20 - State Attorney:

Motion to Admit #149 - gun by stipulation

15:08:37 - Other: Schwartz, DA3 Christoph

No objection

15:08:42 - Judge: Luster, John

Admit #149

15:08:53 - Other: Larsen, #9 Joel Rodney

EX #46A - marks where Vonette was struck. It was 3-5 minutes after she was

15:09:14 - Other: Larsen, #9 Joel Rodney

hit before the police got there. A lady with kids pulled up in a van and she

15:09:42 - Other: Larsen, #9 Joel Rodney

was screaming - she couldn't get turned around fast enough. I put the gun

15:09:58 - Other: Larsen, #9 Joel Rodney

back under the passenger seat and shut the door and walked back to the girls

15:10:09 - Other: Larsen, #9 Joel Rodney

and we walked toward Vonette again and then the officer came up over the hill

15:10:21 - Other: Larsen, #9 Joel Rodney

from the direction he came down. This was 3-5 minutes. We stayed there for

15:10:37 - Other: Larsen, #9 Joel Rodney

a while until we were taken to the Rathdrum PD. When the police arrived they

15:11:24 - Other: Larsen, #9 Joel Rodney

had us stand in different places with different officers. We went in

15:11:38 - Other: Larsen, #9 Joel Rodney

separate rigs to Rathdrum PD where they put us in different rooms and

15:11:53 - Other: Larsen, #9 Joel Rodney

questioned us there. A few days later I spoke to Detective Maskell. When

15:12:31 - Other: Larsen, #9 Joel Rodney

the officer arrived I thought that he had to have passed Ellington going the

15:12:54 - Other: Larsen, #9 Joel Rodney

other way - he had gone back down the other direction. I was frustrated that

15:13:16 - Other: Larsen, #9 Joel Rodney

the deputy didn't go back in that direction. I turned around and

15:13:35 - Other: Schwartz, DA3 Christoph

objection

15:13:43 - Judge: Luster, John

Sustained

15:13:53 - Other: Larsen, #9 Joel Rodney

I was going to get in the car and go again. The officer didn't see him or go

15:14:08 - Other: Larsen, #9 Joel Rodney

after him. If I actually moved the subaru it was minimal. I basically just

15:14:32 - Other: Larsen, #9 Joel Rodney

started it up when they opened the door and told me to get out. If I moved

15:14:46 - Other: Larsen, #9 Joel Rodney

it at all it was just a foot. I don't know how to describe it - I was a

15:15:03 - Other: Larsen, #9 Joel Rodney

wreck.

15:15:43 - Other: Larsen, #9 Joel Rodney

XE - I had problems with my left arm - had surgery - had problems with my

15:16:03 - Other: Larsen, #9 Joel Rodney

right arm also - explains. When I ripped my bicep off on 12/15 I was off

15:16:45 - Other: Larsen, #9 Joel Rodney

work. I'd had 5-6 beers during the afternoon and evening of New Years eve.

15:17:08 - Other: Larsen, #9 Joel Rodney
I had nothing to drink NY Day morning. When I got the call from my daughter

15:17:23 - Other: Larsen, #9 Joel Rodney
she was excited, scared, she talks real fast. The information was flowing

15:17:40 - Other: Larsen, #9 Joel Rodney
fast - she talks fast - I didn't need to hear every detail I just wanted the

15:17:56 - Other: Larsen, #9 Joel Rodney
basics of where they were. She was pretty upset, scared and she wanted us

15:18:18 - Other: Larsen, #9 Joel Rodney
there. Hearing my daughter upset made me upset. I wasn't extremely upset I

15:18:42 - Other: Larsen, #9 Joel Rodney
just wanted to go to my daughters. I heard that my daughters were talking to

15:19:32 - Other: Larsen, #9 Joel Rodney
911 and they said they were following him and were told to stay a safe

15:19:48 - Other: Larsen, #9 Joel Rodney
distance back. I don't believe that they asked me to come. I just asked

15:20:32 - Other: Larsen, #9 Joel Rodney
them where they were and said I was on my way. I knew the gun was there

15:20:43 - Other: Larsen, #9 Joel Rodney
because I left it there the day before. I didn't think about it - it's not

15:21:04 - Other: Larsen, #9 Joel Rodney
uncommon for me. PL EX #149 - my gun - I think it's about 4 lbs. 34 lbs. I

15:22:35 - Other: Larsen, #9 Joel Rodney
had no difficulty lifting it. We drove about 40 mph to look for the girls.

15:23:39 - Other: Larsen, #9 Joel Rodney
I'm sure I was upset. We didn't talk much - we were basically driving and

15:24:01 - Other: Larsen, #9 Joel Rodney
looking for that vehicle. I drove to Brunner road and was able to see the

15:24:41 - Other: Larsen, #9 Joel Rodney
girls - 10 - 15 minutes passed. I talked to them for about 5 minutes. When

15:25:06 - Other: Larsen, #9 Joel Rodney
I talked to them they were in no danger and I was in no danger. My

15:25:23 - Other: Larsen, #9 Joel Rodney
daughters didn't say how fast they were following him. When I saw them on

15:26:16 - Other: Larsen, #9 Joel Rodney
the corner I didn't tell them to go home or tell them it was a bad idea to

15:26:31 - Other: Larsen, #9 Joel Rodney
have a high speed chase with a vehicle. When I first talked to the girls

15:27:41 - Other: Larsen, #9 Joel Rodney
they were parked - not chasing him - on the corner they were parked - not

15:27:55 - Other: Larsen, #9 Joel Rodney
chasing him. I spoke to some people who were looking at donkeys. I was fine

15:28:24 - Other: Larsen, #9 Joel Rodney
- just talking to them. I wasn't excited - I was completely calm. When the

15:29:56 - Other: Larsen, #9 Joel Rodney
officer turned the wrong way I couldn't believe it and I asked the girls if

15:30:10 - Other: Larsen, #9 Joel Rodney
they'd told him which way the guy went. I believe that the officer abandoned

15:30:51 - Other: Larsen, #9 Joel Rodney
us. My daughter's car was totaled, my daughter had back surgery and

15:31:09 - Other: Larsen, #9 Joel Rodney

insurance has run out. I believe that the KCSD abandoned us. I was going ot
 15:31:28 - Other: Larsen, #9 Joel Rodney
 get visual contact of where myself and the lady and man at the donkeys
 15:31:45 - Other: Larsen, #9 Joel Rodney
 thought ithe blazer was. I was going to get permission to walk the fence
 15:32:07 - Other: Larsen, #9 Joel Rodney
 line. I wasn't excited I wanted to visually see where he was. I heard an
 15:32:36 - Other: Larsen, #9 Joel Rodney
 engine start and I assumed that it was him when I heard it start. I dropped
 15:32:48 - Other: Larsen, #9 Joel Rodney
 to one knee to look for the car. I ran back to the car and got in. I said
 15:33:29 - Other: Larsen, #9 Joel Rodney
 to my wife "I just heard him, seen him - he's right over there". I was
 15:33:47 - Other: Larsen, #9 Joel Rodney
 excited. The blazer was starting to drive out from where it was hiding. We
 15:36:40 - Other: Larsen, #9 Joel Rodney
 began following him and we got up to 60mph on corners and probably 80 on the
 15:36:55 - Other: Larsen, #9 Joel Rodney
 straight of way. The speed limit is 50. I had no choice - the daughters
 15:37:26 - Other: Larsen, #9 Joel Rodney
 were ahead of us. I knew that the girls were on the cell phone and that at
 15:37:41 - Other: Larsen, #9 Joel Rodney
 any time the police would be coming. I don't think that Vonette was flashing
 15:38:04 - Other: Larsen, #9 Joel Rodney
 her lights or honking her horn. We had slowed way down at Scarcello - we wee
 15:39:09 - Other: Larsen, #9 Joel Rodney
 in our lane - took the corner about 25 - we didn't squeel the tires going
 15:39:26 - Other: Larsen, #9 Joel Rodney
 around the corner. I never told my wife to try and pass our daughters. I
 15:40:09 - Other: Larsen, #9 Joel Rodney
 told my wife to get around he girls and block him from hitting the girls. My
 15:42:21 - Other: Larsen, #9 Joel Rodney
 car is moving very little when the subaru and blazer hit. The contact was in
 15:42:37 - Other: Larsen, #9 Joel Rodney
 front of the drivers side door. He ran into us. The impact between the
 15:44:47 - Other: Larsen, #9 Joel Rodney
 subaru and blazer did not move the blazer - if any it would have shifted to
 15:45:09 - Other: Larsen, #9 Joel Rodney
 th right. The subaru was stopped. I could hear the blazer accelerate hard -
 15:45:49 - Other: Larsen, #9 Joel Rodney
 then it let off - then it accelerated again. When he came around uss he
 15:46:50 - Other: Larsen, #9 Joel Rodney
 turned back left squared up a little bit and punched it. The front tires
 15:47:26 - Other: Larsen, #9 Joel Rodney
 of the blazer were on the Honda. I know that the left one went up on the
 15:47:44 - Other: Larsen, #9 Joel Rodney
 hood - totally. It would surprise me if my daughter testified that the
 15:48:10 - Other: Larsen, #9 Joel Rodney
 wheels were not on the Honda.
 15:48:16 - State Attorney:
 Objection

15:48:26 - Judge: Luster, John
Sustained

15:48:33 - Other: Larsen, #9 Joel Rodney
3-4 seconds between contact with the subaru and the Honda. When he had

15:49:18 - Other: Larsen, #9 Joel Rodney
contact with the Honda and began showing them that's when I got out of the

15:49:30 - Other: Larsen, #9 Joel Rodney
car. At that point I decided to take the gun with me. I was pretty upset at

15:49:47 - Other: Larsen, #9 Joel Rodney
that point. I knew I was going to use it when I got it out of the car - I

15:50:08 - Other: Larsen, #9 Joel Rodney
thought he was killing my girls. I probably would not have been so sure I'd

15:51:08 - Other: Larsen, #9 Joel Rodney
use the gun if the wheels of the blazer were not on the Honda. I knew he was

15:51:20 - Other: Larsen, #9 Joel Rodney
trying to kill my girls.

15:51:43 - Judge: Luster, John
Publish weapon - advises jury of the safeguards in place iwth the weapon.

15:52:36 - General:
Time stamp

15:52:39 - Judge: Luster, John
I didn't have the gun pointed at the blazer the while time. It was pointed

15:53:55 - Judge: Luster, John
to the ground. I ran across the road with the gun - I never made it to the

15:54:23 - Judge: Luster, John
passenger side - that's when he put it in reverse and came back. From the

15:54:44 - Judge: Luster, John
from the time I left the subaru to when the blazer went into reverse 3

15:55:11 - Judge: Luster, John
seconds. You could not see in the back windows of the blazer - they were

15:55:36 - Judge: Luster, John
tinted. As I came up to the side the first thing I saw was the dash and saw

15:56:57 - Judge: Luster, John
him grab the gear shift, put it into gear and punch it. From that point on

15:57:18 - Judge: Luster, John
he never let up until this was all over. She was running to get around to

15:58:47 - Judge: Luster, John
the girls. There was a dog in the blazer sitting right up next to him

15:58:59 - Judge: Luster, John
between the seats. Not in the passenger seat. No one asked me before if I

15:59:14 - Judge: Luster, John
saw a dog. At this time the barrell of the gun is less than a foot from the

16:00:00 - Judge: Luster, John
blazer and about 4' from the defendant. At that point my wife is alive and

16:00:16 - Judge: Luster, John
the blazer is no longer in contact with the Honda. After he was already

16:00:39 - Judge: Luster, John
going toward my wife I discharge my weapon. I didn't yell to my wife to get

16:00:59 - Judge: Luster, John
ot of the way - I'm sure she was trying - I didn't think I had to - that's

16:01:12 - Judge: Luster, John

common sense. I shot at his car - I could hear scraping - either tires or

16:02:00 - Judge: Luster, John

the blazer scraping down the side of the Honda. I did hear the gun go out -

16:02:18 - Judge: Luster, John

didn't hear the bullet hit the vehicle - I did see the hole - about

16:02:39 - Judge: Luster, John

dime/nickle size. After the vehicle ran over Vonette I began shooting again.

16:03:34 - Other: Larsen, #9 Joel Rodney

None of us could touch Vonette. I went to the subaru and started it. I

16:03:59 - Other: Larsen, #9 Joel Rodney

don't remember anyone saying anything - after it was started they opened the

16:04:15 - Other: Larsen, #9 Joel Rodney

door and told me to get out.

16:04:31 - Judge: Luster, John

Recess for the evening - return at 8:30 am - admonishes jury.

16:05:30 - Operator

Stop recording:

Session: 08282006A
Session Date: 2006/08/28
Judge: Luster, John
Reporter: Rush, Bill

Division: DIST
Session Time: 08:28

Courtroom: Courtroom9

Clerk(s):
Booth, Kathy

State Attorney(s):
Verharen, Art

Public Defender(s):
Chapman, Brad
Schwartz, Christopher
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0007

Case number: CR06-1497
Plaintiff:
Plaintiff Attorney:
Defendant: Ellington, Jonathan Wade
Previous audio and annotations can be found in case: 0001
Additional audio and annotations can be found in case: 0008.
Co-Defendant(s):
Pers. Attorney:
State Attorney:
Public Defender:

2006/08/29

08:20:11 - Operator
Recording:
08:20:11 - Recall
Ellington, Jonathan Wade
08:20:25 - Operator
Stop recording:
08:41:59 - Operator
Recording:
08:41:59 - Record
Ellington, Jonathan Wade
08:42:06 - Interpreter:
In session - the jury has expressed concerns re; facial expressions of one

08:42:48 - Interpreter:
of the defense attorney's staff - Ms. Beeler and this needs to be addressed

08:43:08 - Other: Taylor, DA1 Ann
We have addressed it and will continue to address it as people come and go

08:43:24 - Other: Taylor, DA1 Ann
from the courtroom

08:43:27 - Judge: Luster, John
Additionally juror Best has expressed that he goes to the same physical

08:43:43 - Judge: Luster, John
therapy office and that this has been the talk of the office - he advised

08:43:53 - Judge: Luster, John
that this is a nonissue for him

08:44:08 - State Attorney:
Art Verharen - no questions

08:44:29 - Other: Taylor, DA1 Ann
We'd like to find out what he's heard

08:44:51 - Judge: Luster, John
Bring juror best into the courtroom

08:45:21 - Other: Best, Juror
Explains discussion with personnel at Physical Therapy - this doesn't change

08:45:50 - Other: Best, Juror
anything and I just didn't want any surprises to come out.

08:46:03 - State Attorney:
No questions

08:46:17 - Other: Taylor, DA1 Ann
No questions

08:46:40 - Judge: Luster, John
Juror to return to the jury room

08:49:19 - Other: Taylor, DA1 Ann
re: inmate in custody of DOC Jonnie Longest - order to transport - he's not

08:50:16 - Other: Taylor, DA1 Ann
here

08:50:22 - Judge: Luster, John
Bailiffs to check on it.

08:50:34 - Other: Taylor, DA1 Ann
Also, Subpoena DT - are the medical records here?

08:50:51 - Judge: Luster, John
sealed documents are here - review later. Return the jury - jury present and

08:51:08 - Judge: Luster, John
in place

08:51:29 - Other: Clerk, Kathy Booth
Swears #9

08:51:40 - Other: Larsen, #9 Joel Rodney
I was transported to the Rathdrum PD and had an interview. I remember going

08:51:55 - Other: Larsen, #9 Joel Rodney
there - I was pretty upset, shaken, my wife had just been run over. I told

08:52:10 - Other: Larsen, #9 Joel Rodney
the truth to the best of my knowledge. What I told him was that the police

08:52:48 - Other: Larsen, #9 Joel Rodney
asked the girls to follow him at a safe distance. When I went to meet the

08:53:01 - Other: Larsen, #9 Joel Rodney

girls I was under the impression that 911 directed the girls to follow the
08:53:12 - Other: Larsen, #9 Joel Rodney
man. I remember telling him that the Deputy went in the wrong direction. I
08:53:27 - Other: Larsen, #9 Joel Rodney
don't remember saying that this pissed me off - I think I told him it upset
08:53:43 - Other: Larsen, #9 Joel Rodney
me but wouldn't be surprised if I said it pissed me off. I remember telling
08:54:41 - Other: Larsen, #9 Joel Rodney
him that I'd told my wife to block him. I meant that I told her to block him
08:56:10 - Other: Larsen, #9 Joel Rodney
from hitting the kids. I'm not a man of big words and my wife had just been
08:56:21 - Other: Larsen, #9 Joel Rodney
splattered all over the road. I could hardly talk at that time. I told the
08:58:18 - Other: Larsen, #9 Joel Rodney
wife to block him from hitting the girls - keep him from getting to our ~
08:58:34 - Other: Larsen, #9 Joel Rodney
girls. The idea to block him from hitting the girls did not come from
08:59:08 - Other: Larsen, #9 Joel Rodney
Detective Maskell. I told that to Detective Stewart. I was told many times
08:59:27 - Other: Larsen, #9 Joel Rodney
I was self defense and not to worry (about using the gun and going to jail).
08:59:47 - Other: Larsen, #9 Joel Rodney
I may have expressed a concern to Detective Stewart about using the gun and
09:00:06 - Other: Larsen, #9 Joel Rodney
going to jail. I was defending myself and my family. I was concerned about
09:00:22 - Other: Larsen, #9 Joel Rodney
what effect my shooting the gun would have. The gun was in the car because
09:00:51 - Other: Larsen, #9 Joel Rodney
we left it there. I put it there the day before because I was horn hunting
09:01:22 - Other: Larsen, #9 Joel Rodney
the day before. I don't remember telling Detective Stewart that I was coyote
09:01:37 - Other: Larsen, #9 Joel Rodney
hunting. (reviews document provided by DA3) Apparently I said that. Mainly
09:02:16 - Other: Larsen, #9 Joel Rodney
what I was doing was horn hunting. I was in the national forest off Bunco
09:02:33 - Other: Larsen, #9 Joel Rodney
road. There was snow but I didn't have snowshoes on so there wasn't much
09:02:49 - Other: Larsen, #9 Joel Rodney
snow. I didn't take the truck because it's a gas hog. I managed to drive
09:03:25 - Other: Larsen, #9 Joel Rodney
the subaru with my injured arm. I put the gun under the seat PL EX #149 -
09:04:41 - Other: Larsen, #9 Joel Rodney
there is not much clearance under the seat but there is enough for the gun to
09:04:59 - Other: Larsen, #9 Joel Rodney
be out of sight. I have to wiggle it a little for it to stay there. I
09:06:09 - Other: Larsen, #9 Joel Rodney
opened the door with the arm not in the sling. I grabbed the gun before I
09:06:51 - Other: Larsen, #9 Joel Rodney
got out of the car. I'm sure I didn't have the gun out before that. I went
09:07:45 - Other: Larsen, #9 Joel Rodney
to the side of the blazer and he never looked at me. Once I saw him he was

09:08:02 - Other: Larsen, #9 Joel Rodney
staring at my wife. The dog was next to him - medium size mix breed dog. I

09:09:29 - Other: Larsen, #9 Joel Rodney
was staring at Ellington and I could see my wife and girls - I could see it

09:09:47 - Other: Larsen, #9 Joel Rodney
all at the same time just like I can see the jury and the clerk now. I

09:10:11 - Other: Larsen, #9 Joel Rodney
remember talking to Deputy K. at the scene and I told him that I told the

09:10:30 - Other: Larsen, #9 Joel Rodney
wife to block him from hitting the girls. I have had to testify in this case

09:10:46 - Other: Larsen, #9 Joel Rodney
twice before and I have talked to the police whenever asked. I'm telling the

09:11:22 - Other: Larsen, #9 Joel Rodney
truth and nothing but the truth. I generally shoot this gun with both hands

09:12:35 - Other: Larsen, #9 Joel Rodney
but on this day I used only one hand and this effected my ability to aim.

09:13:08 - Other: Larsen, #9 Joel Rodney
The first shot I hit exactly where I was aiming.

09:13:34 - Other: Larsen, #9 Joel Rodney
RD - Shows on EX #46 where I was when I first shot at the blazer. I was

09:14:38 - Other: Larsen, #9 Joel Rodney
looking through his windows and i saw the Honda. EX #146 shows placement of

09:16:17 - Other: Larsen, #9 Joel Rodney
auto and wife when shot. I shot at him because he was in forward motion -

09:17:15 - Other: Larsen, #9 Joel Rodney
looking at my wife - he didn't look at me - my wife was running across the

09:17:49 - Other: Larsen, #9 Joel Rodney
road - making a half circle attempting to get to the girls

09:18:09 - Other: Schwartz, DA3 Christoph
Objection

09:18:14 - Judge: Luster, John
Sustained

09:18:23 - Other: Larsen, #9 Joel Rodney
Because the vehicle kept turning left the wife started to go the other way.

09:18:42 - Other: Larsen, #9 Joel Rodney
He was obviously trying to hit my wife because he could have missed her - he

09:18:54 - Other: Larsen, #9 Joel Rodney
went back the way the wife was going. I saw no loss of control as he was

09:19:46 - Other: Larsen, #9 Joel Rodney
making this maneuver - none what so ever. I have been a truck driver for 20

09:20:37 - Other: Larsen, #9 Joel Rodney
years. I drive about 800 miles per week. I work full-time, over-time for 20

09:21:03 - Other: Larsen, #9 Joel Rodney
years. I have witnessed a lot of driving and accidents. I The vehicle

09:21:47 - Other: Larsen, #9 Joel Rodney
didn't go into any kind of a skid. For what we saw there she

09:22:54 - Other: Larsen, #9 Joel Rodney
(wife) was smashed - describes body - she was obviously dead. I told the

09:23:59 - Other: Larsen, #9 Joel Rodney
first officer that I shot the gun and where it was - he retrieved it from the

09:24:30 - Other: Larsen, #9 Joel Rodney

Subaru. The girls had told us they'd called 911 before they called us.

09:26:12 - Other: Larsen, #9 Joel Rodney
RX - there was no loss of control when the Subaru hit the blazer. There was

09:27:01 - Other: Larsen, #9 Joel Rodney
some gravel on top of the asphalt. Gravel makes it easier for the vehicle to

09:27:17 - Other: Larsen, #9 Joel Rodney
slide. I did not see the blazer go further into the driveway after being

09:27:33 - Other: Larsen, #9 Joel Rodney
struck by the blazer. None of us touched the body after the accident. I did

09:27:47 - Other: Larsen, #9 Joel Rodney
not see Joleen touch my wife's body. I knew that the driveway didn't

09:28:45 - Other: Larsen, #9 Joel Rodney
go anywhere - he could have gone down it had he wanted to - if he wanted to

09:28:58 - Other: Larsen, #9 Joel Rodney
leave he could have. I have reviewed my prior testimony and I talked to PA

09:29:13 - Other: Larsen, #9 Joel Rodney
VeHaren. I haven't heard any audio tapes of police interviews.

09:29:26 - Judge: Luster, John
step down - excused for now - we'll let you know when you need to testify

09:29:47 - Judge: Luster, John
again, if you do.

09:29:54 - State Attorney:
Recalls #8

09:30:22 - Other: Clerk, Kathy Booth
Swears #8

09:30:51 - Other: Daly, #8 Sean Michael
Power Point Presentation - #146 - descrobed

09:54:34 - General:
Time stamp

10:00:07 - Other: Daly, #8 Sean Michael
The super elevation of the roadway is 3.3%. The blazer was going up the super

10:01:42 - Other: Daly, #8 Sean Michael
elevation (grade) to the Honda. There was not enough space to gain high

10:11:04 - Other: Daly, #8 Sean Michael
velocity between the contact with the subaru and contact with the Honda. I

10:11:18 - Other: Daly, #8 Sean Michael
think it's about 48'. The debris is scattered because the driver of the

10:12:04 - Other: Daly, #8 Sean Michael
blazer is pushing the Honda. There was a point where the Honda could not be

10:16:25 - Other: Daly, #8 Sean Michael
pushed any longer as the tires were being furrowed into the dirt.

10:20:46 - Other: Daly, #8 Sean Michael
There is a tire mark left on the light in the front which indicates that

10:21:27 - Other: Daly, #8 Sean Michael
there was a greater amount of weight on the vehicle forcing the bumper down

10:21:45 - Other: Daly, #8 Sean Michael
and the tire was in contact with the headlight. The damage to the hood is

10:22:32 - Other: Daly, #8 Sean Michael
left by the bumper of the blazer. There are tire marks on the bumper of the

10:24:22 - Other: Daly, #8 Sean Michael
Honda.

10:32:21 - Judge: Luster, John
Recess - admonishes jury

10:32:32 - Operator
Stop recording:

10:51:53 - Operator
Recording:

10:51:53 - Record
Ellington, Jonathan Wade

10:51:54 - Judge: Luster, John
Back in session - return the jury - jury present and in place.

10:52:21 - Other: Daly, #8 Sean Michael
(resumes testimony with aid of power point presentation) The Honda bumper was

10:53:55 - Other: Daly, #8 Sean Michael
down in the ditch at the end of the blazer acceleration marks. Explains

10:54:53 - Other: Daly, #8 Sean Michael
damage to the driver side door of the Honda. I have an opinion as to when

10:56:03 - Other: Daly, #8 Sean Michael
the damage occurred to the driver side door - based on my training and

10:56:53 - Other: Daly, #8 Sean Michael
experience the damage to the door was near the end - this is due to the

10:57:11 - Other: Daly, #8 Sean Michael
deviation of the marks on the roadway. A vehicle traveling at a normal speed

11:00:37 - Other: Daly, #8 Sean Michael
cannot leave acceleration marks on the pavement - not on this type of

11:00:53 - Other: Daly, #8 Sean Michael
surface. Normal acceleration is such as when we leave our driveway or leaving

11:01:12 - Other: Daly, #8 Sean Michael
a stop light to get out into traffic. The left rear tire of the Honda is

11:02:12 - Other: Daly, #8 Sean Michael
slightly off the ground because of the angle it is over the ditch. Explains

11:09:18 - Other: Daly, #8 Sean Michael
the difference between short and long radius turns

11:09:33 - Other: Daly, #8 Sean Michael
When you're trying to figure out what happened perception time plays a part

11:13:05 - Other: Daly, #8 Sean Michael
in it. I look at this (#146) and see there was a lack of reaction. There is

11:17:13 - Other: Taylor, DA1 Ann
Objection

11:17:17 - Judge: Luster, John
Sustained

11:17:30 - Other: Daly, #8 Sean Michael
There is no indication that this accident was tried to be avoided. There is

11:18:28 - Other: Daly, #8 Sean Michael
nothing to indicate that perception time had anything to do the running over

11:18:55 - Other: Daly, #8 Sean Michael
o Mrs. Larsen. There is no evidence of any evasive action that Mr. Ellington

11:19:35 - Other: Daly, #8 Sean Michael
took when there is a human being standing in front of the vehicle.

11:22:51 - Other: Daly, #8 Sean Michael

11:22:59 - Other: Daly, #8 Sean Michael
XE - I was initially contacted to photo and process 3 vehicles. I write a

11:23:26 - Other: Daly, #8 Sean Michael
report about that and no other reports. At the first PH in January I

11:23:42 - Other: Daly, #8 Sean Michael
testified for the defense and after that, I became involved in reviewing

11:24:05 - Other: Daly, #8 Sean Michael
Trooper Robnett's work. Re: training and experience. I took advanced

11:25:46 - Other: Daly, #8 Sean Michael
accident class twice - I found it interesting. I don't know how many times I

11:29:35 - Other: Daly, #8 Sean Michael
have reconstructed a 3 car accident I probably have not reconstructed any

11:30:10 - Other: Daly, #8 Sean Michael
accidents before where one vehicle has left the scene. It is important to

11:30:27 - Other: Daly, #8 Sean Michael
have the scene secured and I am aware that for a time this scene was not

11:30:43 - Other: Daly, #8 Sean Michael
secure. I am aware that vehicles i.e. ambulances drove the scene and this

11:31:06 - Other: Daly, #8 Sean Michael
could move debris. I saw a video of the scene and I saw one vehicle turn

11:31:20 - Other: Daly, #8 Sean Michael
around. I know there were police officers there. Small pieces of debris can

11:31:41 - Other: Daly, #8 Sean Michael
be moved by people walking over it. I agree that some of the debris could

11:32:19 - Other: Daly, #8 Sean Michael
have been moved if cars traveled over it. Blood on the roadway driven over

11:32:39 - Other: Daly, #8 Sean Michael
by a car can alter the marks. I testified that the blazer was on top of the

11:33:09 - Other: Daly, #8 Sean Michael
Honda. I have used the word "climbed" on top of the Honda. At the first PH

11:33:29 - Other: Daly, #8 Sean Michael
I didn't want to use that word but today I choose to use it. I'm testifying

11:33:42 - Other: Daly, #8 Sean Michael
for the state. Explains induced damage and corresponding damage. I did not

11:34:41 - Other: Daly, #8 Sean Michael
line up the Subaru/Blazer or Honda/Blazer. I noticed that the blazer had

11:35:45 - Other: Daly, #8 Sean Michael
temporary registration in it. I said the ground to top of hood was 48". I

11:36:04 - Other: Daly, #8 Sean Michael
think the roadway to top of bumper was between 2-3'. I don't know how low an

11:36:49 - Other: Daly, #8 Sean Michael
undamaged Honda bumper sits. The roof of the Honda was measured and I think

11:37:15 - Other: Daly, #8 Sean Michael
it was 53" or 63" The Honda sits fairly low to the ground. The Subaru was

11:38:39 - Other: Daly, #8 Sean Michael
moving when the Subaru and Blazer made contact. This was at a very low rate

11:38:55 - Other: Daly, #8 Sean Michael
of travel. I didn't reconstruct any speeds for this incident. There was no

11:39:19 - Other: Daly, #8 Sean Michael
drag factor done. My entire analysis is from reviewing Robnett's

11:40:15 - Other: Daly, #8 Sean Michael
measurements, photos and marks on the roadway. The marks on the roadway were

11:40:28 - Other: Daly, #8 Sean Michael

very important as would any other marks that could have been left. Things
11:41:39 - Other: Daly, #8 Sean Michael
will change if we put other things in or take things out. It's fair to say
11:41:55 - Other: Daly, #8 Sean Michael
that if Trooper Robnett screwed up then my analysis could be different.
11:42:52 - Other: Daly, #8 Sean Michael
EX #14, - If the subaru was 3-6' further into the driveway the incident
11:54:06 - Other: Daly, #8 Sean Michael
probably would have ended here - explains - if you go 6' further the subaru
11:55:44 - Other: Daly, #8 Sean Michael
would have completely blocked the blazer.
11:56:29 - Other: Daly, #8 Sean Michael
It is 100% impossible to make a cast of the tire of the blazer and compare it
11:59:01 - Other: Daly, #8 Sean Michael
to the acceleration mark - none at all.
12:01:11 - Operator
Stop recording:
13:29:47 - Operator
Recording:
13:29:47 - Record
Ellington, Jonathan Wade
13:29:51 - Judge: Luster, John
Return the jury
13:29:57 - State Attorney:
Can Trooper Robnett remain in the courtroom for the remainder of the trial?
13:30:12 - Judge: Luster, John
Yes
13:30:22 - Other: Taylor, DA1 Ann
Only through expert testimony?
13:30:29 - Judge: Luster, John
No - through the remainder of the trial - I have not made the exclusion to
13:30:46 - Judge: Luster, John
expert testimony
13:30:57 - State Attorney:
Motion to admit EX #29B and #35B - photos cropped as the court directed
13:32:33 - Other: Taylor, DA1 Ann
There is a better way and I think there are better photos and we still
13:32:48 - Other: Taylor, DA1 Ann
object.
13:32:51 - Judge: Luster, John
Comments - Admit EX #29B and #35B
13:33:50 - Judge: Luster, John
Return the jury - jury present and in place.
13:35:13 - Other: Daly, #8 Sean Michael
It appears that the blazer attempted to avoid the subaru. The pitch of the
13:35:38 - Other: Daly, #8 Sean Michael
ditch is fairly steep and if the blazer had gone into the ditch it probably
13:35:57 - Other: Daly, #8 Sean Michael
would have rolled. It is natural to step on it to get out of a position
13:36:20 - Other: Daly, #8 Sean Michael
where your auto might roll. I didn't physically look at the dirt in the

13:38:40 - Other: Daly, #8 Sean Michael
area. EX #16 shows muddy snowy area. \$146 - diagram. The edges of the
13:39:43 - Other: Daly, #8 Sean Michael
road are not consistent. The roadway there is 12-14' wide - the blazer is
13:40:02 - Other: Daly, #8 Sean Michael
longer than the road is wide. Shows point of impact with the Honda. I
13:40:35 - Other: Daly, #8 Sean Michael
cannot specifically place the Honda at an angle. Portions of it were in the
13:40:50 - Other: Daly, #8 Sean Michael
correct lane and portions of it were not. I recall testifying that it was at
13:41:06 - Other: Daly, #8 Sean Michael
an angle and not parallel to the lines. Reviews transcript of 2nd PH
13:42:14 - Other: Daly, #8 Sean Michael
transcript as directed by DA. In prior testimony I placed the Honda at a
13:42:32 - Other: Daly, #8 Sean Michael
similar angle to the subaru. I was not aware that the Honda was moving
13:42:48 - Other: Daly, #8 Sean Michael
forward at the time of impact with the blazer. I don't know angle
13:43:09 - Other: Daly, #8 Sean Michael
positioning of the wheels of the Honda at impact. The two vehicles traveled
13:43:38 - Other: Daly, #8 Sean Michael
approximately 48'. This didn't taken into consideration the length of either
13:44:00 - Other: Daly, #8 Sean Michael
vehicle. EX #20 I did not do any measuring to see if the marks on the car
13:45:14 - Other: Daly, #8 Sean Michael
lined up with the bumper guard after it got turned. EX #122 - the mark is
13:46:05 - Other: Daly, #8 Sean Michael
from the tire but it looks different than the tire mark on EX #20/ \$123
13:46:37 - Other: Daly, #8 Sean Michael
shows damage - I think the hook on the bottom of the blazer assisted in the
13:46:51 - Other: Daly, #8 Sean Michael
tear but didn't do the entire thing. It is my testimony that the damage to
13:49:13 - Other: Daly, #8 Sean Michael
th Honda was done in one motion. I was not aware that the blazer backed up
13:49:27 - Other: Daly, #8 Sean Michael
an then Mr. Larsen heard crunching again as the blazer went forwrd again.
13:51:05 - Other: Daly, #8 Sean Michael
The mark underneath the Honda had to have come from a tire - the right rear
13:51:20 - Other: Daly, #8 Sean Michael
tire as it was being pushed. Positions Ms. Larsen about 8' back from where
13:51:56 - Other: Daly, #8 Sean Michael
she lay in rest at the time she was struck. I do not have Mr .Larsen with
13:53:08 - Other: Daly, #8 Sean Michael
the gun on the diagram. I am familiar with guns and their sounds when fired.
13:53:28 - Other: Daly, #8 Sean Michael
I am not as familiar with smaller caliber handguns. I have seen them and
13:53:47 - Other: Daly, #8 Sean Michael
fired them but use a 45 at work. EX #149 - I have probably seen a gun like
13:54:13 - Other: Daly, #8 Sean Michael
this before but have not fired one. I am familiar with the sound it makes -
13:54:24 - Other: Daly, #8 Sean Michael

it's loud. I don't think that I've been shot at before but found a bullet
13:54:41 - Other: Daly, #8 Sean Michael
hole in my police car before - don't know where it came from. I have heard a
13:55:01 - Other: Daly, #8 Sean Michael
weapon discharge by accident. I acted startled. I had no reason to believe
13:55:23 - Other: Daly, #8 Sean Michael
I was being shot at. If I thought I was being shot at I would try to protect
13:55:37 - Other: Daly, #8 Sean Michael
myself. Someone getting shot at might duck. I know that Mr .Larsen was
13:56:28 - Other: Daly, #8 Sean Michael
standing off to the right of the blazer and that the bullet hole is about a
13:56:40 - Other: Daly, #8 Sean Michael
90degree angle. This is the first I'd heard that he was an arms length away.
13:57:03 - Other: Daly, #8 Sean Michael
If I was going to use my vehicle for escape I'd use a direct route
13:58:04 - Other: Daly, #8 Sean Michael
I've never been fired upon so I don't know what I'd do.
13:58:41 - Other: Daly, #8 Sean Michael
RD#8 - EX #123 - the bumper hit the ground - it was torn off - this means
14:03:05 - Other: Daly, #8 Sean Michael
that the portion of the Honda was at or near the ground due to the severe
14:03:27 - Other: Daly, #8 Sean Michael
weight on it. EX #20 - This shows a lighter mark on the top than the bottom
14:04:11 - Other: Daly, #8 Sean Michael
- different composition than the bumper guard. The change in color says it was
14:04:42 - Other: Daly, #8 Sean Michael
caused by a moving item. There was no indication at all that the blazer
14:07:29 - Other: Daly, #8 Sean Michael
attempted to avoid the Honda.
14:07:42 - Other: Taylor, DA1 Ann
objection
14:07:46 - Judge: Luster, John
Sustained
14:07:56 - Other: Daly, Sean
I look at all the evidence provided o me Trooper Robnett's diagrams are not
14:08:55 - Other: Daly, Sean
inconsistent with his notes. Speeds are important in an accident
14:09:44 - Other: Daly, Sean
investigation. sometimes an accident would not have occurred if they had
14:09:58 - Other: Daly, Sean
traveled at the correct speed. This is not an accident in my opinion
14:10:27 - Other: Taylor, DA1 Ann
Objeciton - ask for argument outside the presence of the jury.
14:10:39 - Judge: Luster, John
Excuses and admonishes jury
14:11:27 - Other: Taylor, DA1 Ann
That answer was designed to inflame the jury - the question of accident is
14:11:45 - Other: Taylor, DA1 Ann
for the jury to decide - motion for mistrial. It is our position that the
14:12:20 - Other: Taylor, DA1 Ann
prosecution is inviting error and has done so.

14:12:36 - Judge: Luster, John
I have listened to this officer testifying for a few days now and I believe

14:12:54 - Judge: Luster, John
his testimony has been just that - an intentional act on the part of the

14:13:07 - Judge: Luster, John
defendant.

14:13:12 - Other: Taylor, DA1 Ann
My objection is the word "accident" and the over emphasis of that word.

14:13:43 - State Attorney:
I think this is proper and has a place in this trial

14:14:04 - Judge: Luster, John
I'm more concerned about the responsive nature of the evidence.

14:14:59 - Other: Daly, #8 Sean Michael
We could get an acceleration factor which is the opposite of a drag factor

14:15:20 - Other: Daly, #8 Sean Michael
and it would only be. Cannot determine the speed of the defendant - we have

14:17:18 - Other: Daly, #8 Sean Michael
lost some short term evidence. There is a distance between perception and

14:18:43 - Other: Daly, #8 Sean Michael
reaction and I am unable to do an appropriate analysis of the reaction time.

14:19:05 - Other: Daly, #8 Sean Michael
Speed has nothing to do with this incident. My opinion is that if he saw the

14:20:29 - Other: Daly, #8 Sean Michael
hazard and had time to react he would have taken a different direction of

14:20:47 - Other: Daly, #8 Sean Michael
travel. I didn't work the placement of Mr. Larsen during the incident at

14:21:30 - Other: Daly, #8 Sean Michael
all. I agree that if Mr. Larsen were standing in the roadway at that time it

14:22:12 - Other: Daly, #8 Sean Michael
would not be the direction of least resistance. I don't know where he was at

14:22:25 - Other: Daly, #8 Sean Michael
the time - I didn't factor in speed because I didn't feel speed was a factor

14:22:58 - Other: Daly, #8 Sean Michael
in this crash. I believe this to be an intentional act due to the

14:23:31 - Other: Daly, #8 Sean Michael
information I have come up with and reviewed. The fact that there is no

14:24:12 - Other: Daly, #8 Sean Michael
evasive action at each event and that the Honda was pushed so hard and that

14:24:29 - Other: Daly, #8 Sean Michael
he didn't take a different route - these are the reasons I believe this was

14:24:53 - Other: Daly, #8 Sean Michael
an intentional act.

14:25:05 - Other: Daly, #8 Sean Michael
RD - speed is not a factor because it was intentional and regardless of the

14:25:22 - Other: Daly, #8 Sean Michael
speed the incident would have still happened.

14:26:03 - Other: Taylor, DA1 Ann
Ask he not give his opinion on the ultimately issue.

14:26:20 - State Attorney:
I plan to ask the last 2 questions and ask for a ruling from the court

14:27:31 - Judge: Luster, John

Explains

14:28:09 - Other: Daly, #8 Sean Michael

If speed is slower people have more time to react after they perceive a

14:28:37 - Other: Daly, #8 Sean Michael

problem . explains what portion is on purpose There is no indication at all

14:32:23 - Other: Daly, #8 Sean Michael

that the subaru kicked the blazer into the Honda. The Honda being pushed

14:33:33 - Other: Daly, #8 Sean Michael

to the side of the road until it was almost furrowed into the dirt is also an

14:33:54 - Other: Daly, #8 Sean Michael

indication.

14:34:26 - Judge: Luster, John

I'll allow the questions - objection noted - deny the motion for mistrial.

14:34:56 - Judge: Luster, John

Recess

14:35:05 - Operator

Stop recording:

14:50:31 - Operator

Recording:

14:50:31 - Record

Ellington, Jonathan Wade

14:50:35 - Judge: Luster, John

Back in session - return the jury - jury present and in place.

14:51:26 - Other: Daly, #8 Sean Michael

RX continues - I didn't line the items up to corresponding damage I could

14:51:54 - Other: Daly, #8 Sean Michael

match up by looking at the scratch marks, paint transfer, etc. - there was no

14:52:08 - Other: Daly, #8 Sean Michael

need to match them up. I didn't see the temporary registration in the rear

14:52:35 - Other: Daly, #8 Sean Michael

window at all. If someone drove over blood on the roadway it would show.

14:52:50 - Other: Daly, #8 Sean Michael

Blood is a liquid and it would cover the surface of the tire and transfer to

14:53:12 - Other: Daly, #8 Sean Michael

the road - I saw nothing like that.

14:53:21 - Judge: Luster, John

Witness excused.

14:53:57 - State Attorney:

Calls #10

14:54:09 - Other: Clerk, Kathy Booth

Swears #9

14:54:53 - Other: Swanson, #10 - Alford L.

ISP Detective - police officer 21 years and 16 years with ISP - I started as

14:55:14 - Other: Swanson, #10 - Alford L.

a detective. Re: duties, training and experience. I have had 400 hours of

14:55:39 - Other: Swanson, #10 - Alford L.

crime scene investigation. Some portions of my classes were specific to

14:56:15 - Other: Swanson, #10 - Alford L.

firearms training/ballistics. We use standard rods - different sizes for

14:57:01 - Other: Swanson, #10 - Alford L.

different size bullets, lasers and a standard protractor to determine angles.

14:57:27 - Other: Swanson, #10 - Alford L.
I found myself at the ISP impound yard when requested to process 3 vehicles.

14:57:43 - Other: Swanson, #10 - Alford L.
I took photos of the blazer and later took photos of the other cars. I also

14:57:58 - Other: Swanson, #10 - Alford L.
took photos of the underside of the blazer. I laid on my back for some of

14:58:14 - Other: Swanson, #10 - Alford L.
the photos and others were taken when it was up in the air on a stand

14:58:28 - Other: Swanson, #10 - Alford L.
as a mechanic might use. In the blazer I followed the hole for the bullet and

14:59:03 - Other: Swanson, #10 - Alford L.
was unable to find the bullet. There appeared to be a lead smear on the

14:59:18 - Other: Swanson, #10 - Alford L.
engine but the hole was only in the front quarter panel. We placed a rod

14:59:35 - Other: Swanson, #10 - Alford L.
similar size to that of the hole to determine the trajectory of the bullet.

15:00:34 - Other: Swanson, #10 - Alford L.
EX #103, #104 - showing rod in the hole - showing trajectory of the rod that

15:01:03 - Other: Swanson, #10 - Alford L.
day.

15:01:07 - State Attorney:
Motion to admit EX #103, #104

15:01:25 - Other: Chapman, DA2 Brad
No objection

15:01:31 - Judge: Luster, John
Admit EX #103, #104.

15:02:01 - Other: Swanson, #10 - Alford L.
#102 - accurate photo

15:02:38 - Other: Chapman, DA2 Brad
No objection

15:02:44 - Judge: Luster, John
Admit EX #102

15:02:57 - Other: Swanson, #10 - Alford L.
The right rear window rubber appeared to have a projectile mark on it - the

15:03:17 - Other: Swanson, #10 - Alford L.
projectile didn't go into the front passenger compartment of the auto. EX

15:03:38 - Other: Swanson, #10 - Alford L.
#101 is a photo of that mark

15:03:53 - State Attorney:
Motion to admit #101

15:04:07 - Other: Chapman, DA2 Brad
No objection

15:04:11 - Judge: Luster, John
Admit EX #101

15:05:49 - Other: Swanson, #10 - Alford L.
Describes photos EX #101-104 to jurors.

15:06:43 - Other: Swanson, #10 - Alford L.
The projectile was traveling from the rear toward the right of the vehicle

15:07:08 - Other: Swanson, #10 - Alford L.
when the shot was fired. The shot to the front quarter panel was from the

15:08:06 - Other: Swanson, #10 - Alford L.

side and almost directly straight on - pointed down a little bit. I went
15:08:26 - Other: Swanson, #10 - Alford L.
inside the blazer.
15:08:49 - Other: Chapman, DA2 Brad
Objection
15:09:03 - Judge: Luster, John
Overruled
15:09:12 - Other: Swanson, #10 - Alford L.
I have a birth certificate with me. EX #160 - Utah birth certificate for
15:10:03 - Other: Swanson, #10 - Alford L.
Jonathan Wade Ellington - located in the glove box of the blazer. It is in
15:10:17 - Other: Swanson, #10 - Alford L.
substantially the same condition now as it was when I removed it from the
15:10:28 - Other: Swanson, #10 - Alford L.
glove box of the blazer.
15:10:37 - State Attorney:
Motion to Admit EX #160
15:10:49 - Other: Chapman, DA2 Brad
No objection
15:10:53 - Judge: Luster, John
Admit #160
15:12:25 - Other: Swanson, #10 - Alford L.
I looked under the blazer for blood - found none - I found red fabric from a
15:12:45 - Other: Swanson, #10 - Alford L.
bolt. There were red flakes on some cross members. I looked for evidence in
15:13:14 - Other: Swanson, #10 - Alford L.
the tires - found shared glass in one of the tires. I took photos of the
15:13:28 - Other: Swanson, #10 - Alford L.
processing. EX #100 - photo of left front tire attempting to show the glass
15:14:03 - Other: Swanson, #10 - Alford L.
shard. EX #105 shows the red fabric on the bolt. #106 -- hair on
15:14:30 - Other: Swanson, #10 - Alford L.
differential area. #106 - hair on front U-joint of the vehicle. I took
15:14:44 - Other: Swanson, #10 - Alford L.
these photos on the 4th.
15:14:53 - State Attorney:
Motion to admit #100, #105, #106, #107.
15:15:13 - Other: Chapman, DA2 Brad
I don't believe that #100, #105, #106 or #107 are relevant to anything
15:16:36 - Other: Chapman, DA2 Brad
material in this case.
15:17:25 - Judge: Luster, John
Overruled - Exhibits #100, #105-107 are admitted.
15:17:55 - Other: Swanson, #10 - Alford L.
I have a masters certificate from POST. Part of my specialized training is
15:21:05 - Other: Swanson, #10 - Alford L.
in the area of ballistics. EX #149 - I have not seen this weapon before.
15:21:35 - Other: Swanson, #10 - Alford L.
This is a Smith & Wesson - probably a 44 Magnum - I can't see the caliber.
15:22:33 - Other: Swanson, #10 - Alford L.
EX #102 - photo showing the bullet hole in the right front quarter panel. A

15:23:06 - Other: Swanson, #10 - Alford L.
weapon like this would make a hole in a vehicle such as this (as in photo).

15:23:25 - Other: Swanson, #10 - Alford L.
A .22 caliber is a handgun one might use to shooting cans - etc. A 44 is

15:23:52 - Other: Swanson, #10 - Alford L.
whata i consider as a large caliber handgun. The hole in the blazer is

15:24:15 - Other: Swanson, #10 - Alford L.
consistent with what I would think is consistent with 44 caliber handgun. I

15:24:31 - Other: Swanson, #10 - Alford L.
was not on Scarcello road. With the evidence that was available I cannot say

15:24:48 - Other: Swanson, #10 - Alford L.
how far away the person was who shot that weapon. The hole is not perfectly

15:25:36 - Other: Swanson, #10 - Alford L.
round - a round hole is more consistent with a 90 degree strike. I cannot

15:25:58 - Other: Swanson, #10 - Alford L.
say what caliber was fired from the hole shown.

15:26:43 - State Attorney:
Objection

15:26:47 - Judge: Luster, John
Sustained

15:27:23 - Other: Swanson, #10 - Alford L.
The right front quarter panel projectile was traveling slightly down. As I

15:28:30 - Other: Swanson, #10 - Alford L.
recall it was fired from a very slight angle. The person who fired it was

15:28:51 - Other: Swanson, #10 - Alford L.
faily close to 90 degrees to the vehicle. I have fired a firearm like this.

15:29:05 - Other: Swanson, #10 - Alford L.

15:29:09 - State Attorney:
Objection

15:29:15 - Judge: Luster, John
overruled

15:29:20 - Other: Swanson, #10 - Alford L.
I have fired a weapon like this and the one I show was loud and it kicked a

15:29:38 - Other: Swanson, #10 - Alford L.
lot. I've seen people shoot them one handed - it depends on how they

15:30:02 - Other: Swanson, #10 - Alford L.
practice. The second strike on the blazer was in the rear passenger side

15:30:31 - Other: Swanson, #10 - Alford L.
window. This did not go all the way into the window and I don't know how far

15:30:44 - Other: Swanson, #10 - Alford L.
away this was shot from . i didn't find any more bullet holes nor did I go to

15:31:00 - Other: Swanson, #10 - Alford L.
the scene in an attempt to find fragments or anything.

15:32:16 - Judge: Luster, John
Witness excused - Recess for the day - admonishes jury - We'll return to

15:32:55 - Judge: Luster, John
courtroom #1 tomorrow at 8:30 am.

15:33:35 - Operator
Stop recording:

obtain information via dispatch. Dispatch said they were following the vehicle at a high rate of speed – being over 100 mph. I told dispatch to tell the person to not follow and to pull over to the side of the road. Not more than 2 minutes later dispatched said the female very upset saying her mother had been struck by the vehicle and was deceased. I turned my lights on a second time when dispatch advised a person had been struck by a vehicle. The video was initially activated near Lone Mountain and Ramsey and when I was on Ramsey probably 1-2 miles north of Scarcello I turned lights and siren on activating the video. When I came on to the scene I observed several people running around. There was a white passenger car on the N side of road, smoking or steaming with front end damage. There was a red car on the other side in the road and a female laying in the road. I went directly to the female lying in the road. Jovone and Joleen were both there, crying and emotional. I was able to determine that the female was their mother. My pocket recorder was on at this time. I talked to Mr. Larsen after medical arrived. After I listened to the girls I rendered aid to Vonette and then Deputy Gregg arrived within a few minutes. We accessed her and unable to do CPR due to her injuries. We stayed with her until medical got there because she was #1 priority. I asked the family to back away from the scene so we could render aid. I wasn't exactly sure who the male was at this time. After medical arrived I was able to talk to the two women and Mr .Larsen. My recording recorded from my initial contact with the girls, looking for the subject and my response back to the scene and probably 5 – 10 minutes of talking at the scene before the tape ran out. The length of the recording is approximately 27 minutes long and stops when the tape ran out. **EX #148 – is the mini cassette** that I booked into evidence the date of the incident. I have listened to it and it is accurate. This recording has been cued up to when I was in contact with the Larsen girls.

PA Motion to Admit #148

Voir Dire

By DA1 There is nothing missing from this tape. I have reviewed it.

DA1 No objection

J Admit #148

PA Motion to Publish

J Only cued up portion to the end of the tape.

Tape played (log 1838 – 3066)

#15 There was a smudge on the driver's side window where one of the girls said the man hit the window. At the scene I started to set up a perimeter almost immediately. Medical arrived within 5-10 minutes and took over. Deputy McFarland arrived at Ramsey and Scarcello and sealed off the west end. I wasn't sure about the west end but Trooper Lind arrived and his vehicle was at the west end. I went to talk to Mr. Larsen and he was at the west end. He was very emotional and distraught. At this time I discovered he was the husband of Vonette and not a bystander. He described what happened. He said he was able to park his vehicle behind the jimmy as it slid into a snow bank. He said the jimmy came around his Subaru causing damage,

continued forward and collided with the white Honda on the north side of Scarcello containing the girls. He said the jimmy went onto the Honda – came off and his wife Vonette was in the way and got struck.

Joel advised me he had fired shots at the jimmy but not until after Vonette was shot. He told me the firearm was underneath the front passenger seat of the firearm. I retrieved the 44 magnum – 5 spent cases and one open slot. I secured the weapon and the casings in my patrol vehicle. Sgt. Carrington arrived within 10 – 15 minutes of my arrival. At the time I didn't notice it but reviewing the tape I saw one vehicle drive through the scene. Medical responded from the west and their ambulance drove through the scene. That is it to the best of my knowledge. I was there for about 1 ½ - 2 hours.

Log 3601 – Tape change to Tape 62294 Log 0068

The video camera was activated when I was looking for the vehicle at Lone Mountain Trail Rd. and went off when it ran out about 1 ½ - 2 hours later. I am visible in the video and so is Deputy Gregg. In portions of the video Mr. Larsen and the girls are visible. With the position of the patrol car you can pretty much see the whole scene including Ms. Larsen, the cars, medical, etc. **EX #147 is the original tape from the VHS recorder in the vehicle.** This is an accurate recording of what happened.

PA Motion to Admit EX #147

Voir Dire

By DA1 I have recently viewed the video and nothing has been added or deleted. My vehicle was parked at the east side of the scene.

DA1 No objection

J Admit EX #147

#15 There are things on the video that have nothing to do with this incident. The tape is cued up to the incident.

PA Motion to publish video.

J Jury out for lunch recess –admonishes jury. Return at 1:15 pm.

Log 0213

J Back in session

PA I have given the court 2 audio recordings of phone calls defendant made from the jail. There are two calls on one phone call – the first portion to his friend Jake Bronson and the second portion to his fiancé. This is two separate conversations although the phone was not hung

up the phone was passed to another person so 106 does not apply and I request to enter the redacted version.

DA2 Shortly after his arrest the defendant invoked his right to a lawyer. When a citizen does this the state cannot use it's wiretapping capabilities to circumvent those rights. That is exactly what is going on here. He may be subject to the wiretapping in the jail but to introduce it in a court of law violates the constitution. Should the court decide that their wiretapping come in – Rule 106 - re: tape recorded conversation – he makes a statement “I saw this woman” later there is a fuller explanation wherein he says she ran right out in front of me and they were shooting at me what was I supposed to do?” He didn't even know it was a woman – they had to tell him it was.

PA Each recording has the warning that the conversations were subject to recording and a continued conversation is a waiver of that. The conversations are at two different times with two different people. Under the hearsay rule and IRA 106 the redacted portion should be admitted.

J I have reviewed both recordings. I don't think this is a wiretapping. He was making a phone call from the jail and it had to be operator assisted and there is a warning to anyone that may be engaged in the conversation that it could be recorded. It is not a continuation of any interrogation following Miranda. This is a willing conversation between the defendant, Mr. Bronson and his girlfriend. This falls outside the gambit of governmental intrusion. I'm not persuaded that this is two separate and distinct conversations. Simply because it is by telephone and the phone had to be handed from one person to another. This is a continuation of the conversation. Not only was the phone call monitored but it was timed. The rule doesn't pertain to calls or conversations but to recordings. If the state is intending to offer the recording of the conversation it must be the full recording.

PA No questions

DA2 In the second part of the conversation there is a statement regarding an outstanding warrant that had nothing to do with this incident but as to a misdemeanor probation violation. We would like to edit this information re: 404B information.

J Comments – we have a stipulation that we not play all the video now?

PA Yes

J The jury can watch the balance in the jury room. Return the jury – jury present and in place. Counsel has agreed to publish certain portions of the video and when you start your deliberations you will have it available to you and you can examine it in full.

PA/DA Stipulate that the court reporter need not record the video.

Video played

Log 1649

#15 I took the gun into evidence. I took the empty shells out of it and stored them as well – **EX #149A – evidence envelope the shells were put into – same condition.**

DA1 No objection

J Admit EX #149A

#15 He told me he hadn't shot until Ms. Larsen had been struck. Mr. Larsen didn't state if Mrs. Larsen had the gun or not. Initially he had mentioned that he had been in the lead – I assumed he was the one in the lead following the blazer. I didn't make the family stand separately. When I told them to move back I didn't know who Mr. Larsen was. I didn't separate them. He made no mention that he was blocking the blazer from the Honda. I did not see Mr. Larsen move the Subaru. There was some movement in Mrs. Larsen. Jovone and Joel were right there by Ms. Larsen when I arrived. I believe Joleen was close by walking around. I don't recall there being a vehicle parked on the east side or not. Mr. Larsen didn't have the gun in his hand when I arrived. 69 seconds seems accurate from the time I activated lights/siren to arriving at the scene. My video shows the one vehicle going through the scene.

J Recess in place. Back in session.

#15XE

Cont. There was a vehicle parked at the west side when I pulled up but I don't know what it was or when it left. I believe that I had turned on Scarcello when I got the call to upgrade to lights/siren. Shows on EX #2 where first saw the girls. At one point one of the girls said he could have gone straight – which to me means straight up the road and around the corner. That also helped me determine which way to turn. When I got the call I was at the state line area and it took me 20-30 minutes to get to the girls. My first contact with them they didn't tell me how fast they were going – and I don't remember asking them. In my first contact with them they were excited and giggling. I told them I'd be right back and to call 911 if they saw the vehicle again. I never told them to follow the vehicle. When dispatch told me how fast they were going I told dispatcher to tell them to stop. There was no need for them to follow the vehicle. I read the news paper and found out they had filed a \$1 mil torte claim against me indicating I had abandoned them. I did not abandon them.

RD#15 In my report I said Vonette was not moving and turned blue. She had been moving – but it was a twitch – body movement – not particular like she was trying to get up or anything. She was never conscious enough to make eye contact or respond to me. Her eyes were open with a blank stare. Deputy Gregg turned her over to attempt CPR. When I got there she was laying on her left side – open skull fracture. To my knowledge that was the only time she was moved. I have no other knowledge that she had been moved at all. The Honda did not appear to have been moved. I don't think the Subaru had been moved.

Mr. Larsen volunteered the information that he shot the gun. He made no attempt to hide it – it kind of surprised me – he brought it up himself.

RX#15 Reads portion of PH transcript – there was movement – she could have been attempting to breathe. I'm not a doctor.

J Excused.

PA Calls #16

C Swears

#16 Ann Margaret Thomas – I live on the Bronson property – ranch property. I live in a studio apartment separate from the main home with my son. Jake and Janice Bronson live in the main house. There are 2 entrances on Brunner road to get into the property – circular property. I know Jonathan Ellington and have for about 1 ½ years. Identifies the defendant in the courtroom. I am his fiancé and have been since Christmas 2005. We were living together and had been for about 5-6 months. We had a motor home at the time that was behind the mechanics shop. In October we got a blazer through Jon's work. We didn't get it registered. His boss was going through the process of getting us the title. His boss was L & H Trucking – Wayne & Lori. The title was not passed and never registered. On a couple of occasions I drove the vehicle.

New Years Eve night 2005 – Jon and I were together at the Bronson residence having a get-together. This started about 5:00 pm. There were numerous people there – about 20. We were there until about 8:30 and then we went to bed. We had a disagreement that started about 5:00 am. I'm not sure of the time but I know it was before the sun came up. It could have started at 3:30. I was not awake before that.

DA1 Objection

J Will allow

DA Objection

#1 Before the argument started I was laying in bed. I had gotten up – I couldn't sleep. When I got up I believe that Jon was sleeping. I began watching TV and when Jon got up our disagreement started. Our disagreement went on for ½ hour at the most. I was laying in bed not speaking and watching TV. We were having a disagreement about my health and I was stubborn. He got up and walked off saying he was going to a friend's house. I'd say this was about 6:00 – 6:30 am. It was before the sun came up. #68 photo of our blazer. We didn't have plates on the blazer when we got it from Wayne and Lori. There were never plates on the vehicle and it was never registered in our name.

When he left Jon had not been drinking. He was gone about 3-4 hours. Before Jon left that morning I had been in the blazer – I took cigarettes from it. I had keystone beer in the blazer. At some point he came back – I think it was about 11:30. He parked in the normal spot and came into the motor home. He came in and he was a little upset about a little incident on the road with two young girls – playing cat & mouse with him. He had a cell phone at that time but don't know if it was with him. He said he didn't want to call the police and I said if they were going to

come they'd end up coming to the house and the topic changed. He said that the two women said they had called the police – he didn't seem concerned. He said that they were playing "cat & mouse." He didn't say he had gotten out of his car. I remember talking to Maskell about this but don't remember Maskell telling me Jon pounded on their window. I never told Maskell that Jon was screaming at the girls. He basically told me that the young girls tried to cut him off the road. He brought up my health issues and I walked out. I was in denial about being sick and I didn't want to hear it.

Log 3730 – Tape change to Tape 62295 Log 0151

He was upset about what happened with the girls but the topic didn't last very long. I don't remember telling Maskell that Jon became so angry that I had to leave the house. I left and went to Janice's house and mentioned it to her. I was going to leave the house and it had nothing to do with Jon's anger.

DA1 Objection

J Sustained

#16 I didn't tell Maskell that I was going to leave the house until things cooled down. I was at the Bronson house about ½ hour until he pulled in followed by a burgundy Subaru. It was a dark colored vehicle – it went though the driveway very fast. That was the last I saw of Mr. Ellington for a while.

XE#16 I was the first one up in the motor home on New Years Day. When Jon got up we got into a disagreement. This was not a screaming match. No shouting or screaming. He was frustrated/concerned about me not taking care of myself. He left about 6 – 6:30 that day and came back about 11:30. When he came back and before I left we continued our disagreement – it was not a screaming match. Jon has a dog.

RD#16 When he came back at 11:30 I couldn't tell he'd been drinking – I wasn't right up in his face.

J Witness excused for now.

PA Calls #2

C Swears

#2 (Brad Maskell) - January 3 I arrived at my office and received a phone call from Ann Thomas. I talked to her about things that transpired between she and Mr. Ellington 1/1/6.

J Advises jury – testimony for impeachment only

#2 Ms. Thomas spoke of him returning and describing the incident on the roadway between he and the young females. She said that he had explained to her that he had stopped at the

intersection of Brunner and Ramsey, out of the vehicle, yelled at the girls and struck their window. She said he was upset – had a confrontation out on the roadway. She kind of explained it to me that she was having a difficult time understanding him. I got the impression that he was talking very quickly to her.

DA1 Objection

J Sustained

#2 He was speaking quickly and she got to point that she felt she needed to go to a friend's house to let things cool down. I wrote a report about this incident. (reviews report). She told me that she couldn't understand what he was saying and he became angry.

J Recess – admonishes jury Advises jury of trial schedule.

Log 0658

Log 1369

J Back in session – return the jury – jury present and in place.

XE#2 January 3I had the phone conversation with Ms. Thomas. I try to record these conversations. I was talking to her about the argument she had with Mr. Ellington – she said the argument was due to her health concerns and that the defendant didn't want her to die and she wasn't taking care of herself – she said he left between 6:00 – 6:30 and came back about 3 hours later. She said he told her about the cat-and-mouse incident with the girls and that he was frustrated because she couldn't comprehend what he was telling her about the incident. A transcript of the phone call would refresh my memory. (Reviews transcript) She told me she wanted to go into the house until things cooled off. She may have used the words that she didn't want to argue with him. She said she left him leave about noon and that she saw a car pull in behind him. A little later she told me more about the incident with the girls – that the girls cut him off, driving slow and that he cut around him. She said he told her he got out and confronted the girls and told them they shouldn't be driving that way. She said the girls told him they were calling the police.

J Excused

PA Calls #17

C Swears

#17 Jovone Lee Larsen – recent back surgery – uncomfortable to sit for a long time. I'm 22 years old and have a 4 year old son Zachary. I live with my younger sibling and we live in Hayden. Before the back surgery I worked at Super One for 5 years. I have been off for a while – still have a job when I can go back. I have been off since my back surgery 7/5. The surgery

was to take part of my disc off – called a microdisectomy – from the accident. I lived with my parents my entire life until I moved out.

Joleen and I went to a friends party for New Years Eve. Zack spent the night with my parents. We got back from the party about 2:00 and went to bed. We got up about 10:00 – 10:30. We'd had 2 or 3 drinks at the party and nothing the next day. We stopped at Super One and I got a Sunday paper and doughnut for Zack on the way to my parent's house to get Zack and take my sister home. I was driving a 1996 Honda Accord that I had not even one year. I was making payments on it. I took 95 to Garwood and up to Ramsey. As I got up Ramsey a blazer coming behind me caught my attention. It was just all of a sudden there. It looked like my neighbors car. I had not seen this vehicle before since leaving the store. It got extremely close. He was going back and forth waiting to pass. There was a vehicle coming the opposite way and when that car went past the blazer passed me. He came over right in front of me. This was an abrupt move. At the stop sign of Ramsey and Brunner he stopped and got out. He came to my driver's side window. He got to my window. He was yelling and then he punched it (window). I don't remember what he was saying. I could see his face – it was angry. Identifies defendant as that driver. I told my sister to call 911 after he punched my window and yelled at us. I locked my doors because I didn't know who he was. There was no one else around and no where to go. He took a right on Brunner. We followed him when he took a right on Brunner. We hadn't gotten through to 911 yet and there were no plates on the blazer to tell 911. I could see no plates on the back of the vehicle at all. As we began following the vehicle down Brunner he stopped in the middle of the road. He stopped in our lane and we stopped. He reversed and punched it to the front of my car. He got real close and then stopped. He started going again and went to Weir Road. I'm pretty sure we were on the phone with 911 when he backed up to us. There were 2 people walking down Weir with their kids – we slowed for them – he blew past them. He turned right at Seasons road east bound. He went for a little ways and drifted into a snow bank. Weir isn't paved – that part of Seasons is gravel as well. The road conditions on Seasons is worse than Brunner. He kept driving and made a U-turn on Seasons in the middle of the road. We were behind him in our own lane. He came back toward my car in my lane – fast. He was coming at us and just before us he went back into his lane. He was pretty close when he went back into his own lane. When he was coming towards us I pulled as far as I could to the side of the road. I believe I was stopped when he went past us. We went to where he turned around and we turned around. He went back down Seasons and Weir and we didn't see him after that. I could see down the road and through the wheat field and couldn't see him. We were talking to the 911 dispatcher and then back to Brunner and Ramsey to wait for the officer. We called our parents to let them know what was happening. About 10 – 15 minutes later my Mom and Dad showed up. We told them more about what happened and where we thought he was at. The officer had not arrived yet. My parents went back down the same trek where we had been. I could see all the way down where my parents had been. The Deputy arrived 10 – 15 minutes later and we told him what happened and he gave us statements to fill out. Then the Deputy left. My parents came back and asked why the officer went the other way then they went back down the same road. When Mom and Dad on Brunner and my sister and I were filling out our statements the blazer left the driveway and came back to Ramsey road and turned to go south toward where me and my sister were. This was the same blazer and I could see it was the same blazer. As he went by he flipped us off. When he went by we turned around and followed him because the officer went the other way. If we found him we were going to wait until the police arrived. We

followed him Ramsey all the way to Scarcello and could see Mom and Dad behind us a little way – not too far. I noticed them around us when on the S curves on Ramsey. I was driving about 80 on Ramsey. At Scarcello he turned and my car and my Mom's car followed. We were both still behind the blazer. We followed until the top of the hill at Scarcello. When I got to the top I saw the blazer turning on Scarcello. I stopped – I was slowing down as soon as I saw him turning around. I stopped in my lane. My Mom pulled up between my car and the blazer. He had hit the snow bank and was backing up into my opposite lane to go back into the direction he just came from. Mom and Dad were coming between us. I remember seeing my Mom's car bounce a little bit – the blazer was right in front of it. The next thing I remember seeing was his grill right in front of my car. I don't remember hearing anything. He hit my car in the front drivers side. I don't remember seeing him come around Mom's car before he hit my car. My airbags went off because the blazer hit me. I next remember looking to see that my sister was OK. Her airbag went off as well. She must have looked with big eyes or pointed because I looked out my driver's side and saw the grill again. I had a sensation of moving. I could see the trees behind my sister's head moving. I couldn't tell how far we were being pushed. At some point the pushing stopped. My sister opened her door and jumped out of my car. The grill by my door was pushing me. My sister yelled at me to get out and I went out the passenger side. I don't know if the car was still moving at this time. The blazer was on the other side of my car at this time. I was right outside the passenger door of the Honda and my sister was right next to me.

Log 2858

I remember seeing my Mom under his car and I watched her roll underneath of it. I didn't see my Mom get hit. It was a matter of seconds between me getting out of the car and seeing Mom rolling under the blazer. Next I remember him leaving. I remember my dad firing at Mr. Ellington. I don't remember any sounds. I saw him but I can't remember hearing it either. I didn't see the blazer slow down after it hit my Mom – I saw it leave going faster. I went and sat next to my Mom. I don't know what the next thing that happened was. I sat next to her for what seemed like a long time.

DA1 Objection

J Sustained

DA1 Objection

J Overruled

#17 She was just laying there – curved up – we had to move her hair – it was in front of her face and I told her not to move. I don't know how long it was before Deputy Klinkefus arrived. Medical arrived and at some time I was taken to the Rathdrum PD. I don't know how long after it happened and when we were taken to Rathdrum PD. It seemed like I was there forever. I talked to an officer alone at the Rathdrum PD. I didn't get very far with the witness statement. **EX #153** is the statement I was filling out – this is as far as I got. This is the original statement I was filling out.

PA Motion to Admit EX #153

DA1 No objection

J Admit EX #153

#17 I went to the doctor a few days later and had an injury to my back and knees. I had pain every day and it continued until I had surgery July 5. The pain is gone now.

Log 3461 – Tape change to Tape 62296 – Log 0001

EX #56 – I was standing about where the piece of garbage is when I got out of the car and that's where I was when I watched my Mom getting run over. This happened in Kootenai County, Idaho.

XE#17 When I looked up after I got out of the Honda my Mom was already down. I didn't see my Dad until after the blazer was already gone. We were all around my Mom. I didn't see him run toward her from any direction. I didn't hear the gun being fired. I first saw the gun when Dad was standing by my mom – a couple feet from her. I saw him point it and shoot it. When I was out of the Honda I was looking back up toward the road. Jolene was already out when I was getting out. When I was getting out the Honda was moving a second time. I don't know if it stopped in between. I remember him being on top of me and being off of me and pushing me again. The grill to me was right outside my windshield. I have seen pictures of my car and the crumpled hood. EX #125 photo – recognize the car. I couldn't see the blazer hood – it would have been up over my head. I remember seeing the grill right in front of me. (PH transcript) – I said there was a time that the pushing stopped and started again. Between the first time my car was hit and the second time it was very fast. EX #46 – shows where the car was the first time it was hit. My car was facing west. I don't know if I was still moving forward when hit. I don't know if the second hit rotated the car into the dirt. I remember talking to Detective Maskell a few days after the accident. I remember saying that the blazer had room to go behind my car – like a diagonal shot.

PA Objection

J Sustained

I don't remember making a statement "Daddy, Daddy, he's in a snow bank." My dad was not in my car. I remember listening to the 911 tape and the time it was said corresponds with the time he would have been passing me. My parents were ahead of me and in the opposite lane.

PA Objection

J Sustained

When both lanes were occupied the blazer was still in the snow bank, I believe. I don't know if he made his reverse move at that time. After I saw the Subaru go into the east bound lane it

never went back into the west bound lane. I don't know if I saw it angle into the driveway. When I saw the Subaru bounce a little bit it would have been a little angled about how it is here (on EX #46) – angled into the driveway. I saw my Dad get into the Subaru and saw him move it maybe a foot or two. The officer separated me from my sister and Dad on Scarcello road. I don't know which officer. This happened after I left my Mom. I sat there for a little while. I don't know who took her pulse and left and another person in civilian clothes took a pulse as well and turned her over. Right after I left my mom we were separated. I don't remember when the ambulance pulled up. I was sitting there when the first officer got there. The airbags both went off at the same time but I was still able to see the grill of the blazer.

Log 0707

At Ramsey and Brunner waiting for the officer I talked to my sister. My parents pulled up before the officer. I wasn't surprised when they pulled up. I didn't know that they would come but wasn't surprised – I wasn't far from their house where we stopped. Hillsdale is a smaller road. We just pulled in there and the 911 Dispatcher didn't know where it was at so I said we'd go back to Brunner and Ramsey. Jolene called our parents but it was my idea to call them. They talked to us 2 times. After I spoke to Deputy Klinkefus and he turned west my Dad was wondering why he turned that way. He might have been a little agitated. I told the officer that he (driver) could have made it around the corner but I didn't see it happening. I believe I told the officer that my parents were there looking for the blazer. I didn't wait like I was told because I didn't know how far the deputy had gone and we were on the phone with 911. I didn't wait for my parents at Ramsey and Brunner. The driveway the blazer came out of is the same driveway it came into reverse out of.

When the blazer first came to my attention I thought it was one of our neighbors who drives too fast. I didn't flip him off. That neighbor is Mr. Peck. After the stop sign when I turned on Weir road I went 35-40 maybe. On Weir I went the same, 35-40. I didn't lose sight of the blazer, I kept where I could see him – turned onto Seasons and I saw a problem there staying on the road – I kept on following – I turned around the same place he did and kept on following him. Through the S-curves I was doing 80 and was able to keep sight of him. On Scarcello road Jolene did not tell me that the officer said to stop following. Had she told me this I would have stopped. I wanted to make sure the blazer didn't get away.

Jolene and I went to a party New Years Eve. I had a couple of drinks. I went to bed right away when we got home. I didn't get up with Jolene when she was on the phone in the early morning.

RD#17 I was not blocking the east bound lane when I was stopped before the blazer hit me. My Mom who was ahead of me left the whole lane he was traveling open. He hit me hard and his grill was right in front of me – he had to have been right there on top of me.

J Excused subject to recall on DA's subpoena. Recess for the evening – admonishes jury – return at 8:30 am.

Log 1149

Day 8 August 31, 2006 – Tape 62296 Log 1149

J Back in session

PA Motion to admit #46A & #46C together with #8B

DA1 No objection

J Admit #46A & #46C and #8B

PA My next request is that the Larsen family be allowed to be in the trial. My next witness will testify re: autopsy and they don't want to see that however they are the victims and would like to see the trial in the death of their mother.

DA1 Until our investigator has reviewed all the medical records I don't know if we'll recall them. We'll review and let the court know as quickly as possible

J Provides medical information to Investigator Durant. –

DA3 Motion in limine to exclude autopsy testimony – there is no dispute she was killed by this automobile.

PA I wasn't going to attempt to get in the autopsy photos but I would like his testimony.

DA3 The witness cannot testify about where she was on the road when she was struck – only that she was struck.

J Comments – I will allow the testimony. Return the jury – jury present and in place. Explains jury schedule change – we'll start at 11:00 Tuesday, September 5, 2006.

PA Calls #18

C Swears

#18 Marco A .Ross – Dr. and medical examiner for Spokane County. Re; duties, training and experience. Our office does work for Kootenai County under the authorization of the Kootenai County Coroner. An autopsy is an examination of the body – head to toe – and internally. I have done autopsies on persons involved in auto accident. I have done 1200 – 1500 total autopsies – of that about 10% are auto accidents. When killed by an automobile there are blunt force injuries – explains. I have done autopsies car/pedestrian where there is evidence of dragging. There are different injuries when being hit by an auto rather than being run over by an auto.

January 3, 2006, I did an autopsy on Vonette Larsen at our facility in Holy Family Hospital – re: persons present. .

DA3 Objection

J Overruled

#18 Torso injuries – external – right upper chest area to abdominal area extending to left abdominal area were bruises with a pattern of lines. In the outer abdomen to lateral area bruising in the area. Internally there were several rib fractures. On the left side 8 & 9 posterior and right 3,4,5,8,9 rib posterior rib fractures. Blood in the chest cavity and a tear in the left arterial appendage of the heart. There were multiple bruises and contusions of the lungs, clavicle damage and tear to the upper part of the liver just below the chest cavity area.

External head – left side laceration with shredded tissue with bruising and abrasions on the margins and bruising on the left eye mainly upper eye lid. On the left temple and extending to the left ear was abrasion area. The left ear had bruising and on the back side of the ear were several abrasions and an abrasion on the left side of the scalp almost up toward the lacerations. Abrasions on the hairline right side. Abrasion on right side extending to the right temple. Left cheek mouth to jaw abrasion and bruising. Fractures of the jaw. Upper half of right ear multiple lacerations and bruising on back of right area. The right ear bony section behind the ear contusions. Inside the head contusions – multiple skull fractures. The skull fractures were mainly in the front face area consistent with a crushing force. There were tears in the dura in several places. There were several lacerations of the brain and shredding of the brain tissue. There were multiple lacerations and contusions.

I did not see injuries consistent with dragging the body.

Log 2198

The injuries to the torso were more consistent with being struck by a vehicle rather than being run over. The injury to the heart – laceration – was potentially fatal. The injury to the liver could be potentially fatal in time, if left untreated.

DA3 Objection

J answer yes or no

#18 In this case I cannot give a definitive speed associated with the injuries. The injuries to her face and her head are consistent with being run over. The overall skull had a later compression consistent with being squeezed from side-to-side. The injuries suggest which side of the head was on the pavement when she was run over.

We submit blood and urine samples during autopsies. They were both negative.

XE#18 I cannot tell from the autopsy if she was moving or standing still. I cannot say where she was on the roadway based on the autopsy.

J Witness excused

PA State rests

DA1 Motion outside presence of the jury.

J Jury out – admonishes jury (9:20 am)

Log 2593

DA3 Motion for mistrial – PA indicated the testimony was to determine where she was on the roadway – not a single question was asked by the State.

PA Denied

DA2 ICR 29 – motion for judgment of acquittal on all charges - the court can consider reducing the charge.

PA There is more than enough information to send this case to the jury as charged.

Log 3436 – Tape change to Tape 62297 Log 0001

PA I believe there is implied malice shown – deny motion and send this case to the jury.

DA2 Substantial legal questions posed re: implied malice. *State v. Porter* came out of this court re: implied malice.

J Recess

Log 0059

J Rule 29 – judgment of acquittal motion is before the court – The 2 battery allegations are established by the evidence. As to the 2nd degree murder charge – not satisfied that the state has shown that he deliberately ran over Ms. Larsen. They have met their burden sufficiently re: implied malice but not satisfied a reasonable juror can reach that conclusion re: express malice. Rule 29 motion granted as it pertains to the alternative of express malice. The jury can proceed with the 2 counts aggravated battery and 2nd degree murder with implied malice.

PA Nothing further

DA2 Nothing further

PA What did you decide re: Larsens?

Durant Comments re: medical records

DA1 Unable to make the complete determination if we need to recall them at this time. If we recall, in particular, Mr. Larsen, it would have to do with testimony of his right finger injury and the vehicle backing up.

J The testimony of the Larsen's has been given and is completed. I don't think the Court any longer has the concern that their testimony may be tainted. I see no great utility in excluding them from the courtroom. They may view the proceedings if they wish. Allowing them in does not preclude the defense from calling them. Return the jury – jury present and in place.

Log 0700

DA1 Calls #19

C Swears

#19 Suzie Cooley-Denney – Boise. I was in Kootenai County January 1, 2006, visiting my then fiancé (now married) for New Years Eve. I was on Brunner road tending our donkeys. I had contact with one person in a Maroon Subaru –male.

PA Objection

J Will allow

#19 A gentleman approached us as we were getting out of our car – he pulled up and blocked the driveway – woman driving – stayed in the car – the gentleman asked us if we'd seen a gold blazer in the area. I said no, he kept looking around us as if he didn't believe us. I told him no one else there was Mike, my son and I and I told him of the auto there and that no one else was on the property but us. We were parked in horseshoe driveway facing Brunner. The car was maybe 50' away from us in the driveway. He was very agitated, aggressive, antsy, angry. I was fearful of him. The person driving stayed in the car and I had no conversation with her. Her hands stayed at 10 and 2 and she never looked at us – she looked straight down Brunner. The man turned around, got back into the car and they went down Brunner.

XE#19 We were both out of our auto when they parked in front of us in the driveway – we were not attempting to leave. The man had his arm in a cast and he walked down the driveway to talk to us. He didn't have any kind of a weapon. His left arm was in a sling. We did not give him any information about the Bronson place. I don't know who they are. I have heard the phrase "Jake the Drunk". I don't know who that is. Mr. Larsen never threatened us. Ms. Larsen never got out of the vehicle and she was in the drivers seat.

About 20-30 minutes after I talked with Mr. Larsen I heard sirens. I never went to investigate.

J Witness excused

DA1 Calls #2

C Swears

#2 Brad Maskell – I recall testifying about the weapon under the seat of the Subaru. I slipped the weapon under the seat of the car and removed it. It fit quite easily. I was not seated in the car at the time. There was a time I was with Mark Durant in attempting removal of the weapon. I don't recall if Mr. Durant sat in the seat. I recall Mr. Kukuruza but not Mr. Durant. I was not in a position to see if the weapon was retrieved. **DEF EX J** – documents I obtained and generated in this case.

The first document is a letter from Motorola – their bottom line is that the cell phone of Jolene should have detected the sound of gunfire. Based on that I contacted Remen.

XE#2 Mr. Kukuruza is a traffic accident reconstructionist who at that time, was involved in the case.

J Excused

DA1 Calls #20

C Swears

#20 Mark Durant – criminal investigator with 30 years law enforcement background. I became an investigator in this case. I was made aware that a gun was used in this case and undertook several investigations re: the weapon. There was a question of whether or not the weapon could be removed from under the passenger seat when someone was seated on it. I investigated and met Sgt. Maskell at the impound yard and he brought the weapon. Re: Persons present. I was able to get inside the Subaru and took photos and measured. I found that the gun could be slid under the seat but found that it would slide into the back seat of the vehicle. We found that it is absolutely impossible to remove the weapon from underneath the seat when someone is sitting in the seat because the seat goes all the way to the ground.

XE#20. I got some dimensions (of the car) from the internet. The weapon fit under the seat but could not be removed with someone sitting on the seat. Mr. Kukurusa is heavy set but not obese. A child's seat can compress that seat – it is not a luxury automobile. I didn't take the car out and drive the vehicle. Sgt. Maskell thought my testing was a good idea. He humors me for years now.

RD#20 Describes under the seat of the Subaru passenger seat. There is nothing that would impede something from going back into the passenger rear seat foot well in the Subaru.

J Excused

DA1 Calls #21

C Swears

#21 Heather Ann Galland – Rathdrum 20 years old. I live with my boyfriend. My parents live in Athol and their property is by the Larsen property. I went to school with the Larsen girls. I consider them friends. I have ridden in a car with them. I'm sure they could have flipped someone off but I don't remember specifically seeing it.

XE#21 none

J Excused

DA1 Calls #22

C Swears

#22 Wayne Galland – Spirit Lake/Athol area. I know Joel Larsen – he's my neighbor. I know Jon Ellington – he's worked for me. I sold Jon & Anna a blazer. Neither my wife nor I drove it before. On January 1, 2006, he still owed me money on the vehicle.

There are rural roads where we live.

XE#22 I own a trucking company – L & H Trucking. My wife owns it and I am an employee. I'm the truck boss – I hire and fire the guys. Everything is in my wife's name. I sold the blazer to Jon – I don't think it was to his girlfriend as well. I still have the title – didn't give it to him – he still owe me money. I don't have it registered. I had a temporary on it that I believe was expired. It had no license plates.

J Excused

DA1 Calls #23

C Swears

#23 Heather Marie McCord – Rathdrum – 1/1/6 I was on Scarcello road and about 12:30 pm I came upon an accident scene. I was driving a blue minivan with my children ages 9, 7, 6. I was heading east, coming from Highway 41. I don't recall there being any police there yet. I saw one girl on a cell phone – hysterical – one woman on the ground, another woman and a man. The man was standing over the woman and the other girl was with him. The girl on the cell phone was bending forward and screaming. I talked to the girl on the cell phone. She pointed down the road and said "that guy just killed my mom." I didn't see anyone. I think I was there when the officer arrived. I saw the man have the gun – he was just holding it. I parked my vehicle on the right side of Scarcello Rd. close to the accident. I was parked in a pull off. I got out of my car. I didn't see the man do anything with the Subaru – I was paying more attention to the girls. It wasn't right away that I noticed the man with the gun. I think I was out of my van before I saw it. I left before talking to police. I had my children with me and it was very traumatic. I called 911 and so did my husband. They asked me to go back to the gas station and wait there – they ultimately allowed me to go home and talked to me later. I also allowed them to talk to my 9 year old daughter.

XE#23 I didn't witness the events on the road but got there right after it occurred. I'm not 100% sure if I saw another vehicle – I probably missed it by less than a minute. The three people at the scene were obviously distraught and upset.

RD I never heard the gun being fired.

J Excused -recess – admonishes jury (11:00 am)

Log 2581

J Back in session

DA1 My next witness is Johnny Longest.

PA Objection to this witness at all. I understand that the reason for the witness is to set foundation re: video from convenience store – defendant buying alcohol and in a good mood. The second motion is a 609 motion if you decide to let the video in.

DA1 We do want to show his mood while he was in the store. The prosecution has brought up his mood – there is value here – it shows him buying one can of Zima – not a bottle – this is a good, fair way to show his mood.

PA IRA 401 – I don't see how this video can have anything to do with what happened about 12:30 pm.

J The issue of his mood is certainly in question. I will allow the witness to testify and overrule the objection.

PA Mr. Longest is a convicted felon re: convictions – we'll impeach him re: convicted felon and nature of the judgment.s

DA1 I know those are the types of convictions that the court can use it's discretion on. He is in custody and the jury will know that.

J The state should be entitled, under 609, to make the inquiry. Return the jury – jury present and in place.

DA1 Calls #24

C Swears

#24 Jonnie Leroy Longest II – I'm incarcerated and have prior felony convictions. I'm serving a probation violation sentence now. In 1997 I was convicted of attempting to elude, delivery, possession with intent to deliver a controlled substance. I have a conviction for forgery and attempted burglary. The sentence I'm serving now has nothing to do with this case. Before I

was sentenced I worked at the Twin Lakes Trading Post as manager. I was working 1/1/6. I know defendant from being a customer at the store. We have no personal relationship. I remember him coming in January 1, 2006. We had a video surveillance system. I have reviewed a video of that day. DEF EX K – don't recognize it. I watched the video with a lady and a bailiff guy. The video shows the defendant and what he did in the store together with his mood. I believe he came in early morning – 7'ish – I believe the time is on the video.

DA1 Motion to admit

PA No objection

J Admit EX K

PUBLISHES VIDEO. (log 3349)

Log 3541 – Tape change to Tape 62298 – Log 0001

Log 0213

#24 You could see him purchase a Zima and a juice. The Zima is in a can and the grape juice in a bottle. His mood was pretty comedy – funny. We were having a good old laugh fest. He appeared to be in a pretty good mood.

XE#23 He could have been drinking before that but not really. He was in a good mood. I've seen him in there a dozen or so times – usually purchasing a beer – afternoon/evening – all times of the day

J Witness excused – witnesses not set to arrive until 1:15 pm – Recess to 1:15 pm – admonishes jury.

Log 0319

J Back in session

DA1 Our next witness will be Major Culver and DA3 will be examining him.

PA I'd like to be heard re; this witness – I have spoken to him and have been advised via letter from the defense as to what his testimony will be. I don't have an objection as to the majority of the things he'll testify to except as to effects of gunfire upon persons. Motion to exclude that portion off his testimony.

DA3 He can certainly testify as to what the proper training is if you're fired at. That he himself has been fired at and he has seen others fired upon. Re: training he provides to others and his own experiences.

J I have a heads up as to the testimony and I'll have to rule on it after the proper foundation has been laid. Return the jury – jury present and in place

DA3 Calls #25

C Swears

#25 Dick Culver – Cougar Gulch – I'm retired – write articles, books and teach classes for concealed weapons permits. I taught firearms to Saudi Arabian Marine Corps., contract instructor for ISP POST (explains). Before I retired from Marine Corps I taught the rifle corps. Quantico Marine corps sniper school. I was in the Marine Corps – 25 years active duty and 5 years teaching ROTC in Kellogg, Idaho. My initial degree was in physics and later sent to Marine Corps Naval School for masters degree in ordinance engineering/weapons design. We worked on such things as lasers and electro-optical ordinance.

When I began teaching ISP Post we were coming into the modern “practical” shooting or more properly called combat shooting. I was instructing police officers and did have some civilian classes. I have also taught gun safety classes. Every class I teach starts out with safety – it comes under the heading of self preservation. I taught my first classes at Post in 1980 through 1984 then to Saudi Arabia and when I came back I went to Kellogg and primarily taught things as to counter sniper. During my military experience I saw a fair amount of combat in Southeast Asia and various portions. In S. Viet Nam, Cambodia and various other places. Some of it was classified, some not. I have been exposed to a variety of firearms. I haven't seen one I couldn't pick up, tear apart and put back together again. **EX #149** – without taking it out it appears to be a Smith & Wesson 349 stainless or their version of a 44. This is not a pocket weapon. This appears to be the 8 3/8 barrel which is the longest version barrel they made. I have fired a weapon such as this and owned a blued version of this – the finish has nothing to do with the weapon. When fired it is noisy. The 44 is one of the more abusive weapons available as far as doing evil things to your auditory nerves. They are very powerful and very noisy – an experience. A concussive blast is caused when the power in the cartridge case is ignited by the primer pushing the projectile through the barrel being pushed by gases. At the end of the barrel the gas at the end of the barrel blossoms – it's the gases that make the noise, not the projectile. You can feel it – the concussion. The speed of sound is roughly 1100 feet per second and you'll feel it before you hear it.

PA Objection

J Will allow

The blast from the muzzle gives you a feeling of power. I don't know specifically how far away from a weapon you can still feel the concussive blast. I've dealt with several different models of guns. A 44 caliber would be a lot louder than a 38. This type of firearm has recoil. The 44 has a spirited recoil – it's hard to put a quantitative amount on it but you feel it. Anybody and take that out and put a cartridge in it, cock it and squeeze the trigger. If you want to place all your shots in the same general local a certain amount of training needs to be done. The generally accepted method of shooting these days is two handed shooting – I teach what is sometimes called the

"Weaver Stance". The entire upper body tends to counter the recoil. I have known people in my experience who were official pistolarios who could shoot extremely well one-handed but they'd done it for years and years.

I have instructed police officers – to mentally prepare them for being shot at by the bad guys. Every class I teach I go through this. I would say that if you mentally prepare someone. Everything is overruled by the ultimate adrenaline factor. When I instruct I want to give them every advantage I can. It's always best to teach someone how to react than how to not react.

Everything depends on other factors in his reaction to being shot at. How you react to gunfire depends on your mental attitude. Generally speaking if you see yourself being shot at you want to take cover, save yourself, don't get shot. The secret to success in gunfight is to survive the gunfight. Dead heroes have nice looking gravestones. You can train someone to be an absolutely perfect driver but when something comes up he changes. You want to change him to channel his adrenaline reaction.

EX #149A – these appear to be fired cases from a 44 magnum. The back of the case has RP for Remington Peters 44 Magnum. These cartridges show me nothing as to what type of bullet was used. Explains "a grain" – which is 1/7,000 of a lb. The more grains that you speak of the heavier the bullet. Explains a "muzzle flash" is what appears to be a fireball. This type of 44 magnum has a muzzle flash in my opinion it is a significant muzzle flash.

I attempt to train officers how to control themselves. To an individual who has not continually been on the receiving end of fired projectiles it scares the out of them. If someone is trying to cancel your birth certificate it would certainly get my attention.

XE#25I basically still do the CCW class – it's on demand. I have a criteria and a training schedule. I like to hold a five (5) day class. I can split this over two weekends. These people must be law abiding citizens. I've never given a class to someone I didn't know or have a personal recommendation by law enforcement or, for instance, a real estate company or banker. To get a CCW permit you cannot be a criminal or drug user, convicted of a crime of violence. I have a CCW permit myself and as far as I know there are a lot of people in north Idaho who have the CCW permit. Dirty Harry carried a gun like this. Belly guns are short easily concealed weapons you can put in your pocket. This is not a belly gun – this is a handgun you would probably choose for – a lot of people are handgun hunters and this would be a good use for this type of weapon. "The best gun to have is the one you've got with ya." A 38 in your pocket beats the heck out of a 45 in the drawer. This would be my choice for a hunting handgun. This handgun is not a cheap handgun. I know Mark Durant. We're acquainted. We don't go out and have coffee. I have seen some muzzle flash in the day time but it generally is seen starting at about dusk. Muzzle blast wouldn't be as obvious through a steel panel. It will go through glass. Glass is a great transmitter. It's one of those things – you just had to have been there. Reaction to gunfire – everyone is different. Everything depends on the situation and the terrain.

RD#25 In my personal experience says that something the size of a 44 one foot away from a window the concussive blast would be felt through the window. Blasting will shake windows of a house. A common reaction to being shot at is fear.

RX#25 It would depend on what someone was doing if they would feel that fear.

DA3 Objection

J Sustained

If I'm suddenly aware of someone firing at me I shut everything down. Other people go the opposite direction.

J Witness excused

DA1 Calls #26

C Swears

#26 Gary Wayne Skelton – work in CDA for Skelton engineering as a forensic engineer.

Log 3433 Tape change to Tape 62299 Log 0001

#26 Re: duties, training and experience. My boss is also my father. We divide responsibilities. I have never testified before and am a little nervous. Our office was hired to assist in accident reconstruction. My duties were to create a drawing using the ISP reports, etc. of the incident. Dr. Skelton was to reconstruct the accident. I am the data plotter. I reviewed materials, incident report, field notes, diagram of scene, auto stat vehicle data base program and viewed the vehicles. I also reviewed the 911 taped call.

PA I need to review the report.

J Recess – admonishes jury

Log 0144

J Back in session

PA I have reviewed the information

J Recess – jury is not ready.

Log 0174

J Back in session

DA3 We release Ann Thomas for subpoena

PA No objection

J Fine – return the jury – jury present and in place.

#26 Def EX #M – transcript of enhanced version of the 911 tape – the purpose was to assist Dr. Skelton in the accident reconstruction

DA1 Motion to admit EX M

Voir Dire I have had no training in transcription. I have done them before. I have attributed statements to various people but did not talk to them to confirm that the statements attributed to them were theirs. In some places I put unintelligible – I could hear but not understand what was said. I did not ask any Jolene, Jovone or Joel what was said. I have not put any narratives – where I put “chuckle” it sounded like a chuckle to me. I also have written “unknown noises” and “squealing?” This is a bet of a narrative.

PA Objection

DA1 This transcript was due to assist Dr. Skelton

J Sustain objection

#26 EX G – Troopers notes – I saw these during the course of the investigation and used these to prepare a diagram of the accident scene. **EX L – my diagram of the scene**

DA1 Motion to admit

PA Objection

J Overruled - **Admit EX L**

DA1 Publishes EX L.

Log 0611

#26 One of my jobs was to take photos of the vehicles- they were at the KCSD impound hard. **EX N – photo** shows height of the blazer. **EX O – photo left side of the Honda** approximately at the A pillar. **EX P photo – Honda Q photo white Honda showing measuring tape. EX R- left front door and B pillar of the Honda** with measuring tape. **EX S photo left front fender and hood of the Honda** with measuring tape. All taken to assist Dr. Skelton in his accident reconstruction

DA1 Motion to Admit N-S

PA No objection

J **Admit N-S**

#26 EX T – diagram I made with assistance of computer program. I used information from report of Trooper Robnett. **EX U – close up of same drawing. EX V close up of same drawing.** U and V are pieces of EX T. EX W, X, Y, Z, AA close up of overall drawing.

DA1 Motion to Admit EX T – AA

Voir Dire I use my engineering training in doing reconstruction. I have done this for 2.5 years. I have training for diagram. For this diagram I used Trooper Robnett's notes. Some of the information came from my father and I do not know what it is.

PA Objection

J Sustained at this time.

DA1 Objection

J Overruled

#26 I do not know how much we or I am getting paid for this information.

RD None

J Witness excused Return at 9:00 am 9/1/6 – admonishes jury.

Log 0983

DAY 9 – SEPTEMBER 1, 2006 – TAPE 62301 – LOG 0001

J In session –

DA1 I received a phone call from Jerry Groth who testified for the state last week. He indicated that he had testified truthfully but had some concerns. His main concern is that about 1 month after the death of Ms. Larsen Mr. Larsen began dating Ms. Darlas – receptionist at physical therapist office that 2 of our jurors have a connection with. I have a recording – mark as an exhibit.

PA There is nothing in the record indicating that the jury is tainted. This is just a suspicion or a hunch.

J I'll admit the exhibit – We've already inquired of Mr. Croft – relates inquiry. I note the concern and accept the exhibit. I'm reluctant to talk to the juror and raise concerns that otherwise are not there.

DA1 EX BB

J This is an exhibit for the issues raised only.

DA1 We had a motion pending re: jury view. We wanted to have the weapon fired to demonstrate the sound it makes. There is some discrepancy as to how big the sound is that the gun makes. It is important for the jury to understand how big the sound is.

PA Objection

J Comments - Denied - recess to allow DA opportunity to prepare exhibits for next witness.

Log 2569

J Return jury – jury present and in place.

DA1 Calls #27

C Swears

#27 Janice Bronson – Athol. I know the defendant and have for 16 years. I have seen how he reacts to the presence of a gun.

PA Objection

J Sustained

XE None

J Witness excused

DA1 Calls #28

C Swears

#28 William Skelton – forensic engineer for Skelton Engineering- I was hired by the defense to do a reconstruction. RE: payment amounts - \$6,300 at the time I filed the report. I was not hired by the defense to come up with a certain result. Re: education. Ceramic engineering is the utilization of clay or sand based materials - i.e. brick, tile, concrete, etc. Metallurgical engineering involves metals. In 1985 I took a course in southern California re: aircraft reconstruction – the principles are the same as those involving auto reconstruction. I have held some teaching posts – relates. RE: work history – started Skelton Engineering in CDA in 1990. My first accident reconstruction was about 1977. I have done between 3,000 – 4,000 accident reconstructions. RE: membership in professional associations. I have testified as an expert in accident reconstruction with most of my work in the last 16 years in the northwest. As a guess I have testified in Idaho 40-50 times as an expert. In the last 5 years probably 15 – 20 years as an expert. This is the first time I have ever had 7-8 open accident criminal investigations – most of

my work is in the civil work and 50/50 for plaintiff and defendants. I have worked for Kootenai County assisting Tevis Hull doing accident reconstruction. Generally the state uses the police force as their accident Reconstructionist.

In this case I was given a bunch of information – police reports, accidents, Kootenai county SO investigation, audio tape/digital recording of the 911 CAD call, PH transcripts and interview transcripts.

Each accident is different and the information I used to apply to the accident itself so it can be reconstructed. Measurements, tire marks, location of the vehicles, drag factor are all involved in reconstructing the speed and time of the vehicles. In this case there were tire marks, I had no speeds provided in the accident reports. I use the laws of physics to reconstruct the accident – 3 laws of physics Isaac Newton came up with. I have had training in physics. Newton's laws were applied to this case. Re: applying Newton's laws – conservation of momentum was the most important one. If you take two vehicles coming together – weigh & velocity the same – come together – velocity and weight the same you will have a crumpled front but no movement. When they hit – they stop. If you have a T-bone or side impact the vehicles will move sideways and in the direction they were traveling. If one vehicle is heavier than the other it would generally cause the lighter vehicle – if it's a head on – the same speed – the heavier vehicle would drive the lighter vehicle backward. To understand what happened you have to know the speed of the vehicles and there is a way to sometimes determine the speed of the vehicles prior to impact –

Log 3736 – Tape change to Tape 32301 Log 0001

explains. If there are no braking skid marks post or pre-impact it makes it difficult. The drag factor can be used to determine the speed of the vehicle if it leaves skid marks. Drag factor is the co-efficient of friction. I did not have the drag factor provided by the Idaho State Police. The NW University of Public Institute has published a variety of drag factors based on road type & conditions – for this road & conditions it was .6. I was able to determine speed based on the measurements given in the accident report and manufacture's report as to specifications of the blazer – in this case 0.27. Speed is the only way that you can determine the time between each of the events that occurred. You need to know if Mr. Ellington, and the others, had time to perceive and react to the danger of the approaching impact. Explains perception/reaction time. Gary took information from the police reports and entered it into the computer CAD drawing. I instructed him to place vehicles at particular places to show where the placement was of things that occurred. He placed the vehicles at my instruction. I reviewed his work to make sure it was appropriate. I reviewed photographs. **DEF EX N – S (photos)** – I have reviewed these – reviews plaintiffs exhibits – **DEF EX T – drawing** made from Gary's drawing where I added the placement of the vehicles.

DA1 Motion to Admit EX T

Voir Dire I used the Trooper's data showing where the tire marks were. All the marks he has on there except the continuation of the marks in the east bound lane and continuation marks on the shoulder. We used all the data points he had but since no data points on the east bound lane we did not use them. The photos I saw when Daly testified we saw that these marks (shows) do

show in the photos – the photos we had were dull and could not tell that there were marks in this area.

PA No objection to that exhibit or others.

DA1 Motion to Admit **T – AA**

J Admit **T-AA**

#28 All the tire marks were presented in the ISP report. The Subaru was moved post impact and was pushed rearward and rotated counterclockwise. The blazer then made contact with the Honda at approximately this position (shows). The blazer then backed up and accelerated and made contact with the left side of the Honda, slid off and made contact with Ms. Larsen before continuing on. The other diagrams take each one of the events and breaks them down. DEF U – (figure 2) is the first portion of defendant's T showing the area from the location of the Subaru to the location where the Subaru backed up. PL EX #86 and #111 – these photos helped me in my analysis of what happened between the blazer and the Subaru. The Subaru was not moving at a fast speed at the time of impact with the blazer – maybe 4-6 MPH. At the impact it might very probably have looked like the Subaru bounced a little. EX B – section after the blazer and Subaru made contact showing the blazer making contact with the Honda. I have determined the speed of the blazer based on the acceleration capability of the blazer and the testimony of the Larsens that it was gunned. I have been to the location – the shoulder is sandy loam with a down slope toward the south and as you go toward the east the down slope is considerably greater. The blazer was going approximately 19 MPH at impact with the Subaru and 27 MPH at contact with the Honda. The evasive action began when the Subaru was coming toward him and he tried to avoid the Subaru. He had time to perceive and react to the presence of the Subaru. The impact with the Subaru and blazer is essentially like this (indicates) this would push the rear tires of the blazer to the counterclockwise direction – He was trying to get back up on the road and it put him in a collision course with the Honda.

PA Leading

J Sustained

If the Subaru had been going faster it would have rotated the blazer even more counterclockwise and its path would have taken the blazer to the north of the Honda, possibly. If the Subaru was still there probably would have been no impact with the blazer. It is my opinion that because of the movement of the Subaru the blazer was sent on its path toward the Honda. RE: tire marks on EX T – the Honda, on impact, should have rotated counterclockwise. It didn't. It went clockwise which told me that the front tires of the Honda were turned toward the left – coming out of the west bound lane and into the east bound lane. All of the tire marks were taken from the ISP reports. The Honda appears to be in the east bound lane at impact. It is not possible that it was in the west bound lane pointing toward the east bound lane. The large pile of debris was carried by the blazer into the west bound lane following impact. If the contact had been in the west bound lane all the debris would be in the west lane. I could not tell you the speed of the

Honda at the time it made contact with the blazer. The rotation of the Honda was due to the tires being turned toward the south at the point of impact. I really cannot say if the Honda was rolling forward at the time of impact. The damage of impact to the Honda was soft metal damage – the front bumper of the blazer is a rigid structure – you cannot compare the two. I assumed that the Honda was moving forward. EX W – is the continuation of the impact of the blazer and Honda. This is the approximate point of impact of the Honda and not that shown by ISP. I do not have physical facts to say that is where it stops but this is the result of the heavier, faster blazer making contact with the slower, lighter Honda. The outside mark appears to have come from the tires of the blazer. When the two vehicles came together the bottom of the front bumper – matches almost exactly the top of the Honda bumper. They made simple contact and the bumper of the blazer rode up onto the top of the Honda (EX W) and as the Honda was pushed back the blazer went to the right (clockwise) and the left side front bumper guard made contact with the bumper guard of the Honda and as the separation occurred between the two the left front tow hook made contact with the bumper cover of the Honda and pulled it and the foam core off. From the time of the contact with the Subaru until contact with the Honda it was 1.2 seconds. Mr. Ellington didn't have time to see the Honda and react to the Honda. He may have perceived the Honda but he didn't have time to complete the reaction process. He was still 3/10 of a second short of completing the total process. The blazer would travel another 12' before he applied the brakes. If someone were in the Honda and saw the Subaru bounce a little and the next thing was seeing the blazer on top of the Honda that would support my perception/reaction time. I am not saying the tires of the blazer were on top of the Honda. The bumper guard went up on top of the Honda. The tires were still back – had another 12' before any part of the tires would have made contact with the Honda after the bumper went up over the bumper of the Honda. It may have just touched the headlight. The impact occurred at the bottom of the hood – if you push on a flat metal surface it is going to buckle and that is exactly what happened. If the tires had been on top of the hood I would have expected to see the tire deflated and to find 8 1/4' large heavy rubber transfer on the top of the Honda and tire marks on the hood itself. I have done accident reconstructions where I have seen these before. EX #122 – there are black marks – these came from the bumper guard – explains The black marks from the bumper guard occurred when the blazer came back off the Honda. The tear on the bumper guard is caused from the tow hook on the blazer. The damage created by the heavier and faster blazer does not agree with a very heavy impact. The damage to the Honda is soft metal damage. The structural members of the car are all in the frame. The hood just buckled upon impact. The air bag deployment only requires 12-17 mph. EX #122 – the tire is 8 1/4" wide – you would get a mark 8 1/4" wide, very heavy, and it may go over the bumper cover and on top of the hood itself – I don't see that at all. The blazer was hung up on the Honda and ended up with the tires on the left shoulder – he had to back up to get around the Honda – to get away from them. The blazer was hung up on the Honda. There were two separate times the blazer came into contact with the Honda. The damage to the Honda on the left fender (EX #45) – if the blazer had made contact in this direction (demonstrates) and went up over the top of the Honda to end up at the top of the Honda there would have been a crush at the top-there is a paint disturbance but not a crush as you would have with a 4500 or 4300 lb vehicle coming down. I have seen these marks frequently and there is a difference between the way this vehicles looks and those vehicles look. Figure #5 is my assumed position of the Honda and blazer where they came to rest and the blazer backing up on the roadway. This is based on acceleration marks found on the north shoulder of the roadway prior to the blazer making contact with the Honda again. Shows the acceleration

mark where the blazer went toward the Honda a second time. Explains how you can tell what it is an acceleration mark. It stops because the front outside leading edge of the blazer tire makes contact with the left door of the Honda. This marks is only 5" wide and is a downward rotation of the tire – very little crush on the door at this point – it appears it is the side of the tire. It shows the front left edge of the left front tire sliding down the door for a short period of time – only 5". The marks on the road tell me that the blazer is accelerating and the damage to the vehicle may have been from impact but it continues right across the door knocking off the outside mirror – there is a crush or indent of the door skin at the center of the door itself and it stops at approximately the door pillar where it disengaged from the Honda. The majority of the marks is front the left front fender and the left front bumper of the bumper. The second contact with the Honda would have caused the Honda to change in position moving it slightly to the NE but it probably didn't move very far because the tires were dug into the dirt. To a person in the Honda the second contact with the Honda it would appear that the grill was right at the door. A person in the driver seat would be looking right at the front of the blazer. I agree that the Honda was pushed, slowed and pushed again – two impacts.

J Recess – admonishes jury

J Back in session – return the jury – jury present and in place.

#28 The damage to the left front fender of the Honda ending at the b-pillar was made by the bumper. The contact ended at the b-pillar because it is a very rigid portion of the vehicle and it resisted and pushed the blazer to the right. The acceleration mark ends before the door itself and the black mark was made by the left front tire as the blazer was beginning to leave. When the contact was made it raised the tire up and that's why there was no skid mark there. The blazer moved, as an estimate, from this position to point of impact 15' 10". I made an estimation as to the position of the blazer. You can see that the blazer is beginning to turn away from the Honda. Figure #6 – (EX Y) – shows the blazer now where it start to accelerate in blue and impact with the Honda and the assumed position of the Honda before it made contact with the left front corner of the blazer. There is a tire mark that appears to go right through the Honda – that is from the ISP field notes. I do not see that tire mark in the photos. I cannot corroborate this mark – there are no photos of this. Figure #7 – (EX Z) – shows the point of impact with Mrs. Larsen showing the point of rest of Ms. Larsen. I have calculated the time of free falls of her body without her being tied up on anything on the top of the blazer. It takes 6/10 of a second for her body to fall. Jovone said she rolled 3-4 times. The distance from her point of impact to point of rest was approximately 24'. Figure #8 – point of rest of Ms. Larsen – from ISP field notes. 25' 10" front point of impact to point of rest. Free fall is the time it took Ms. Larsen to reach the laid down position. - .59 or rounded to .6 seconds. The time the blazer left the Honda door to the time Ms. Larsen was struck was only .5 seconds – ½ a second – based on the speed of the blazer, contact with the Honda, continuing acceleration and to reach the position where she was located based on the 25' 10". We have to start with known values (point of rest) and calculate the free fall time and knowing the position where the blazer began to accelerate. I calculated the speed to be of the blazer to be approximately 20 mph when it struck Ms. Larsen. Had she not rolled she would have been 12' further toward the east. Ms. Larsen rolled closer to the point of rest than from the impact point. If the tires rolled over the body as it was moving forward it would put the direction of the roll in the opposite direction. Mr. Ellington had .5 seconds to perceive Ms.

Larsen and react. Perception and reaction time takes 1.5 seconds. He was .2 second from completing the perception time let alone the reaction time. I used the 911 tape to compare the times I calculated from where the blazer backed up. My time began after the blazer backed up and went to the point of impact with Ms. Larsen. It turned out to be 15 seconds from the turn around to the time he struck Ms. Larsen. I saw at least two evasive actions – avoiding the Subaru and backing up and turning right (after first striking the Honda). Once the Subaru impacted the blazer and the impact with the Honda Mr. Larsen did not have time to perceive and react to Ms. Larsen. Ms. Larsen moving did not change my analysis of the situation. The impact occurred with the center of the hood of the blazer. It makes no difference which direction she was traveling – she was still struck in the same position. I have no scientific facts as to why Mr. Ellington traveled in the west bound lane after contact with Ms. Larsen. I am aware that Mr. Larsen was in the east bound lane.

SIDE BAR

J Recess for lunch – return at 1:15 pm.

J Back in session – return the jury – jury present and in place.

XE#28 PL EX #165 – copy of figure #1 – writes acceleration marks, skid marks. It appears to be one of the left tires that left the mark. It would more than likely be the front tire but I have no evidence. Other marks (shows) appears to be both tires.

DA1 No objection

J **Admit EX #165 – Illustrative purposes.**

#28 I believe that the blazer is probably the more powerful vehicle. I have done no tests on the blazer to determine which tires are the drive tires. Under heavy acceleration it would leave marks from the front left and right rear tire – unless one broke free and then the other tire would take over. The blazer is taller than the Subaru and the Honda. The Honda is 70” wide and the blazer is 79” wide. The wheel base on the blazer is 8’11” and total length 15’5”. The track is 64” in front and 63” in back. Shows on exhibit acceleration, skid, and brake marks. I don’t have the acceleration marks in the dirt on my diagram because they haven’t occurred yet. It appears that the blazer was in 4x4. If these marks were not made by the left side then the diagram would be wrong – if it were the right side tire marks then the damage to both vehicles would have been different. The acceleration marks are from the left side and in the photos I cannot see any right side tire marks. Shows marks on EX #15 – reviews photo – this is the first time I have seen this photo in such detail. There appears to be some type of mark in the pebbles. I would expect to see some line on either side of the marks reported. I still think they are left side marks even after looking at the photographs. The alignment of the Honda and the blazer would have been different had it been the right side marks. I am still standing by my diagram. This is based on the ISP measurements.

DA1 Objection

J Sustained

#28 There is a mark I just now see in EX #15 that could be a tire mark from the right side. I don't know how far away from the left front tire mark this mark is = I wasn't at the scene. EX #13 – shows what appears to be the same dirt pile. I cannot say how far away the dirt pile is. If I were wrong as to which side tire mark it was that would put the Honda closer to the double yellow line but closer.

DA1 Objection

J The jury shall determine what the testimony was.

#28 When I was there it was not a big ditch – probably a drop of about 1 – 1 ½ feet. This is a guess – it has been several months since I was out there. There is a drop in this area as well (indicates) so the total drop might be 6"-8". If the drop were several feet the blazer would probably roll and my diagram would be wrong.

The skid marks shown on Trooper Robnett's drawings appear to be appropriate. I agree that (marks indicated) appear to be from the Subaru. A breaking mark is different than an acceleration mark. It is possible that the differences are visible. We have an acceleration mark of 12' before he completed perception/reaction and the brakes were applied. I would assume the height of someone sitting in the blazer would be 55". It is possible that Mr. Ellington saw the Honda when he backed up.

DA1 Objection

J Sustained.

I looked at a number of materials including the testimony of all the Larsens, police officers and 911 tape. I did not come to a conclusion of perception/reaction time – that has been a standard for 30 years that I've been practicing. Based on the avoidance maneuver his attention was on avoiding the Subaru and not the Honda.

DA1 Objection

J Sustained

My reconstruction is based on the ISP measurements, statements of the accident, photos. I did not go into anything that happened before and after the accident. There would be a difference if someone were trying to do something instead of avoiding – the perception may already have occurred.

DA1 Objection

J Overruled

#28 It is pretty obvious there is an evasive action – turning to get away and then getting back on the road.

DA1 Objection

J Sustained

The blazer pushed the Honda 29'. Re: Trooper Robnett's measurements/diagrams. If I took his measurements the resting point would be further by almost 5'. The pushing distance would be quite a bit further in his calculations than mine. In a portion of that the blazer was pushing and part he was breaking. He was going 27 mph. He continued to accelerate for about 12' after contact. It took the Honda 35' to stop. The blazer came off the Honda – but bumper cover and energy absorbers were well behind where the blazer came off. The blazer struck the Honda two times. There is no information in the ISP reports to say how long the two were connected.

DA1 Objection

J Not sure what testimony he's referring to.

That's what they testified to – that the blazer pushed them all the way back. I believe the blazer struck the Honda and propelled it back – there is no physical evidence to show that the blazer was in contact with the Honda at its place of rest – the damage had already occurred.

DA1 Objection

J Sustained

Reviews second preliminary hearing transcript testimony of Mr. Larsen. I don't know when Mr. Larsen indicates when he fired the gun. It looks to me like he had not fired the gun yet when (this paragraph) occurs. I have assumed that after the shot Mr. Ellington accelerated rapidly. I believe there is testimony to that effect. I thought I had read that after the shot Mr. Ellington had accelerated. It's possible that my assumption was wrong – anything's possible. This did not change my opinion that he did not have time to perceive and react to Ms. Larsen being in front of him. Striking distance to point of rest is 25'10". About 12' of that was roll distance based on Jovone's testimony. Jovonne's testimony said she rolled a good 4 or 5 times – so 4 or 5 feet.

DA1 Objection

J Sustained

If I had used Jovone's distance of 4'-5' it would have made a difference of about 18'10" – still behind a near the rear end of the Honda. EX 46A and 46C – copies of Robnett's diagrams – These locations do not agree with physics. The blazer was going to cover 13'10" before the body would drop to a supine position.

J Recess – reconvene Tuesday, September 5, 2006 – jury to return at 11:00 am. I have granted a motion to visit the scene – I have a bus waiting for you – explains procedure. Admonishes jury.

C Swears Bailiff for viewing of the scene.

J Recess.

Log 0294 – Tape 62303

DAY 10 – SEPTEMBER 5, 2006 – TAPE 62303 LOG 1340

J Back in session – return the jury – jury present and in place.

C Swears #28

#28 (William Skelton) – I would say that the Honda was probably totaled. I'm not an appraiser but it was pretty destroyed. The contact was sufficient to cause the airbags to deploy. I think the contact was about 27 mph and 11-17 mph deploys the airbags. There was no major structural damage to the Honda – explains structural damage I saw (cross member and support (by radiator) This would be stronger than the hood itself. I didn't see much significant damage to the balance of the structural parts. The damage to the bumper was to the outside. **EX #121** shows the bumper without the bumper cover. There was structural damage to the bumper. The weight of the bumper was 4300 lbs. The tires of the blazer were not on the bumper. The front bumper of the blazer came down on top of the front bumper of the Honda pulling the cover to the bumper off. This was caused by the impact load when the blazer came down. I hold by my belief that the tire were not on the Honda at all. The front bumper of the blazer got on the hood portion of the Honda and when it exited the damage was caused. **EX #20** – black tire mark on the door – it's about 3" less than the width of the tire. I said that the tire was spinning so my conclusion was that the vehicle was in 4x4. I assume that the front bumper cover was in the proper position before the accident. The tire mark would be totally different if a vehicle was in 4x4 and began to ride up the auto. ISP did not take measurements from where the blazer would have stopped before it took off again. I didn't use a drag factor in my calculations because the wheels were not spinning. The Honda was not pushed sideways – it was pushed rear-ways. It's the weight of the vehicles times the velocity 4300 lbs at 27 mph you have the momentum – momentum of the Honda was zero appx. At the impact – this pushed it rearward – due to perception and reaction he had another 3/10 of one second before he would even begin to react. The Honda was pushed another 12-14' before he could even react. This is not outside the realm of reality. The equation I used was mass X velocity. I don't my calculations with me. (Shows calculations on whiteboard). The gravitational pull is 32'/second/second. The momentum analysis – post impact- combined speed of both vehicles 14.7 – this would be 3/10 of a second back – then they came to a stop. 47' 9" is the total distance traveled per ISP. The two vehicles did not travel 14.7' for the entire 47' 10". It was approximately 32' from where he could have put on the brakes – that's also why the damage to the bumper of the Honda occurred – after he

put his foot on the brake and became disengaged. We don't have any measurements from ISP measurements as to where the blazer stopped. We know where the final stop of the Honda was but not where the first stop of the Honda was.

Perception/Reaction time differs from person-to-person. This is a subjective analysis. I took a vehicle accident reconstruction course in southern California. By the time I took that course I had probably reconstructed 100 vehicle accidents. I have never been to the scene on the day of the accident.

I think the blazer connected with the Honda, backed off and connected again when it was leaving which caused the damage to the left side of the Honda. The blazer was turning to the right as it was doing the damage to the Honda and the blazer driver side front tire did the damage to the side of the Honda. I believe that ISP believes that there was not two impacts and that when he backed up is when he hit Ms. Larsen. EX #166 – large version of drawing already admitted. There's a lot about this that doesn't makes sense. EX #39 – shows acceleration marks to the body of Ms. Larsen. I could not see these in the bad photographs I had. EX #18 – EX #22 – the marks are not very good but I agree they are possibly several feet away from the Honda. EX #12 shows marks (points to area) They don't go along the side of the Honda at its point of rest. EX #35B shows the acceleration marks leading to Ms. Larsen. Mr. Ellington began accelerating and continued through hitting Ms. Larsen. Hitting a person is something you would notice if you had the time to perceive and react. There are all kinds of pedestrian vehicle contacts. I've never heard the specifically classification of three different times of pedestrian vehicle contacts. I believe it is correct that Ms. Larsen had no drag marks on her. It is not possible that she was struck where she lay. It took her 13' to freefall I stand by my conclusions. I still believe that the blazer contact with the Honda and with Ms. Larsen were accidents. I stand by those beliefs.

DA1 I have a witness I need to take out of order – recess and take up that witness?

J Fine – recess – admonishes jury.

Tape 62304- Log 0729

J Back in session – return the jury – jury present and in place.

DA3 Calls #29

C Swears

#29 Gregg M. Stutchman - audio services – we do forensic enhancement of poor quality audio/video recordings and verify authenticity. We do voice comparisons, preparation of demonstrative evidence, acoustic analysis and so forth. I have been involved in the criminal justice system for 33 or 34 years. I began as a police officer in 1973 and when agency went into private. In 1992 I went into private work. . This went into this type of work full time. RE: training and experience. On 17 occasions in CA and NV I have lectured or taught and have written 4 association published articles. Between audio and video I have done my forensic work on over 4000 recordings - about 2/3 of these are audio. I have testified as an expert in 77 or 78

times. I have training re: firearms – explains re: training, experience and association memberships. Our clients include private, PA, news media, police, public defenders, etc. The last time I testified for PA was in Santa Barbara CA in a murder case last week. I was originally requested back I March to do an enhancement of both and do an analysis to see if I could determine gunshot. When you put copy on analog tape you lose a portion of the recording and have background noise. When you transfer to digital you lose nothing. I received a digital recording in this case and did an analysis. I received a CD done by a Mr. Hartman and that had an enhancement of the 911 portion and then 5 excerpts of the recording. I have done numerous analysis of recordings. I estimate that I have done gunshot analysis at least a dozen times. **DEF EX GG – CD** that I prepared with 4 tracks that I prepared - a gunshot recorded by me in a session – it is a known of an outdoor situation 40 caliber weapon. It was also done in an outdoor setting geographically similar to the incident. The second track is a 44 magnum series shot over a Motorola cell phone and recorded over the computer at the lab. I feel that this would be helpful in my testimony. The 3rd track is the recording from Hartman and the 4th the 911 call from where Hartman got his excerpts.

Voir Dire The 3rd and 4th portions are copies of Hartman recordings. Portion #1 recorded 232' away.

PA Objection as to portion #1

#29 The sound of gunshots vary according to the acoustical environment and when there is a gunshot in an area there will be a different reverberation than, for instance, on a beach with sand. The presence or absence of reverbriation is important in my conclusion.

DA3 Motion to admit

J **Admit EX #GG** – but explain to the jury the difference between 40 caliber and 44 caliber.

#29 Both very large with very similar discharge sounds. I first do critical review – Explains. **DEF EX CC** – print of sound spectrograph. This is different than wave form. I prepared this sound spectrograph from Mr. Hartman's recordings called percussive events.

J **Admit EX CC**

#29 The lighter area is "broadband noise" for instance, wind. The lighter area is not a percussive event. **DEF EX DD** – sound spectrograph of a 40 caliber – I used this to review information of Mr. Hartman

DA3 Motion to Admit EX DD

PA No objection

J **Admit EX #CC** – as the gunshot fades off so does the dark portion in the spectrograph. Plays this portion from computer. Recording of a 40 caliber gun from over 200' away. You can

hear the echo sound. I also used a 44 caliber shot at a gun range in CA and recorded through a cell phone and into our computer microphone. **DEF EX EE** – sound spectrograph of the 44 via cell phone

DA3 Motion to Admit EX EE

J Admit EX EE

#30 prepared exhibit FF – spectrograph – this will assist in my testimony.

DA3 Motion to admit EX FF

J Admit EX FF

#30 Explains EX EE and FF. I have recorded the 44 caliber shots on the CD as well – that is tract 2. (plays) The conclusions I was able to make is that two of the five events he indicated were percussive instruments had the reverberation sounds of two gunshots shot in areas of hills and pastures and the others had no similar sounds that were consistent with gunshots. Incident # he says was the crash – it may be. Incident #1 – can hear reverberation of gunshot. Incident #2 is not a gunshot – there is nothing consistent with a gunshot. Incident #3 does have some reverberation similar as to incident #1 and is consistent with a gunshot. Incident #4 in my opinion is breathing – nothing orally or spectrographically with a gunshot – also incident #5. Clipping is when the volume level exceeds the bounds the medium is to handle it. Reviews Hartman exhibit – the areas above the line shows clipping. The microphone would only be clipped by a sound close to the microphone that it so loud it covers other sounds. There was some clipping that took place in Hartman analysis. His report indicates that he normalized twice – explains. It is my opinion that his process of normalizing actually caused more clipping. The screaming into the phone could mask the sound of gunfire. The screaming would be the #1 culprit of masking the gunshot.

Log 2095

If there were gunshot after the really loud screaming they should have been audible on the recordings.

XE#30 The reverberation is caused by items in the area, mountains, trees. The farther the distance of the objects the more reverberation you will have. Flat land can contribute to having no reverberation. I have not been to the scene. The recording, if capable of recording any sound, should record the reverberation. My recording was in a controlled setting and the one via cell phone is not in a controlled setting and could not be as good a recording as mine of the 44 magnum at the range. I don't know if I used the same model. The distance of the gun or gunshot and the recording device from the objects the reverberation was bouncing off would make a difference. I basically disagree with Mr. Hartman as to the number of shots recorded. He lists 5 "percussive instances" His timeline appears to be accurate. I have not done crash sound analysis so I didn't evaluate it. I agree that the sound (shows) followed the crashing

incident. In my opinion the last two incidents were not shots but breathing. I heard no other shots before or after the crashing incident.

RD#30 Part of my conclusion is based on the spectrographs and that the two don't look the same. Explains the difference between CC and EE which lead me to believe Mr. Hartman's analysis was incorrect. I use spectrographs to take out the subjectivity. I was unable to determine from the recordings when Ms. Larsen was struck by the vehicle. It is possible there are gunshots occurring at the same time as the screaming. For the ditch to effect the reverberation the person with the recording device would need to be completely in the ditch.

J Witness excused – recess – admonishes jury.

Log 2982

J Back in session – return the jury – jury present and in place. Dr. Skelton to resume the stand.

#29 I would guess I have done 200-300 accident reconstructions involving vehicle and pedestrians. This is not new to me. I have never heard of or seen the classifications that PA mentioned. 1.5 seconds is the average perception/reaction time. Every time a danger is encountered the person needs to see the danger and then they go through the reaction. Every time there is another danger you start the perception/reaction time again. In this case there were at least 4 and may have been more perception and reaction times – some of which were not completed. Back in 1080 when the rear deck stop lights came out in vehicles a university in CA did a study of front vehicle – and monitor on the second, unsuspecting vehicle, average perception/reaction measured at 1.39. I learned about the norm of 1.5 seconds or $\frac{3}{4}$ second for the perception phase and $\frac{3}{4}$ of a second as the reaction phase. The green book for federal and state department uses 2.5 as perception/reaction time but their 2.5 is based on highway. I have used the 1.5 perception/reaction time for the last 35 years of my work. Other things effect this time.

PA Objection

J Sustained

#29 The perception begins with the viewing or occurrence of the danger – an audio signal would be a perception of danger. If someone perceived a danger and then a gunshot went off it depends on the circumstances if there is a second perception of danger. You may have overlapping perception and reaction time. I learned to do the momentum equation in my physics courses and in undergraduate courses I've had. I use that equation in every accident I work on. I based the speed on maximum acceleration because Joel and Jolene testified that there was acceleration and Joel said the engine was "screaming".

EX shows a mark under the Honda – there was not really a mark underneath the Honda.

Log 3735 – Tape change to Tape 62305 – Log 0154

When the blazer made contact with the Honda it pushed it further to the east. The bumper cover to the Honda was made by the bumper guard. The tire marks would have been similar but wider and vertical to the mark on the side of the door. There was an actual point of impact to the Honda – Shows on exhibits marks that support this theory. The freefall was something like 13-14' – If we move the point of impact 7 or 8' to the east then 2 things happen – the blazer is accelerating another 7-8' and it increases the speed Ms. Larsen would have been carried and increases the time – which is still less than the perception time required.

My testimony is that the marks are left side marks – cannot be right side marks – based on the damage the two vehicles were aligned (shows). The tire mark testified to as being the Honda mark – two other marks unidentified. The point of rest of the Subaru is (shows). If we move the blazer to that area the blazer overlaps the Subaru by about 2'. If these had been right side tire marks of the blazer I would have expected to see severe leftward damage to the Subaru and tire going over the Subaru and there was no sign of such damage. The damage to the Honda would also have changed had these been right tire marks of the blazer – explains. There is not specifically anything about the debris field that tells me if it's the right or left tire mark. The blazer didn't roll because the drop was not significant enough there and there was a snow berm.

I could not see any right side tire marks in the photographs. The accident happened about noontime. The photos I have show the ground differently and the photos were taken about 3:30 – 4:00 pm and it had been raining. I stand by the opinions in my report.

XE#29 I have run over a snow berm. What happens depends on how hard you hit it, etc. I cannot say what cause the marks to not be visible in the photos other than the time of day and weather.

DA1 Objection

J Sustained.

#29 It's possible that you should be able to see the tire marks going up and coming down the snow. I don't see anything in EX #10. My exhibit is a scale diagram based on the ISP measurements of this (Trooper Robnett's diagram) is based on measurements and on scale they should look the same. A debris field locates the area of the impact – not the specific point of impact. Based on the debris field I put the point of impact in the east bound lane.

J Witness excused.

DA3 Request recess.

J Recess – admonishes jury.

Log 1135

J Back in session

DA3 We'll rest

PA We'll have rebuttal – witness Fred Rice.

J I know there is an issues re: Fred Rice.

DA3 We request an offer of proof to first determine if this is proper rebuttal testimony – explains. What Dr. Skelton said was fully anticipated and disclosed. Prior to trial we had requested information as to testimony from Detective Daly and Mr. Rice. Detective Daly did not testify the same as he did at ph as indicated. Additionally, Mr. Rice will not testify the same as he did at the preliminary hearing – The state is seeking, under the guise of rebuttal, another theory of the accident. We have problems with not getting disclosed reports when their testimony is not as indicated. I don't want to ask for a mistrial at this point I believe that the proper remedy is excluding the testimony.

PA I disclosed the witness and he has been available. I believe I would testify generally along the same lines should I ask the same questions. I believe there are slight differences in their testimony now. I intend to focus on pedestrian/vehicle accidents. Fred Rice has training in that field – Mr. Skelton testified to this and it's fair rebuttal. Momentum theory has been brought up and Daly has not had training in this but Rice has and it is proper to ask him that. The marks around the Subaru are also important as to whether they are right or left side and if the contact with the Honda was one or two contacts. This is fair rebuttal. Dr. Skelton testified the damage to the door was as he was leaving and I intend to bring this up – also the debris field.

J Rebuttal is not another opportunity to put on another theory – but to rebut the testimony already given. There are some things problematic as we had a motion on this prior and were told that Mr. Rice was going to testify as he did before. I don't know what his testimony will be. I can't simply exclude his testimony but caution the state to proceed in the true sense of rebuttal.

PA His testimony will only be to rebut Dr. Skelton.

J This is an opportunity to rebut that which was presented by the defense.

DA1 Requests definition of ruling.

J Explains.

DA1 Note that Mr. Rice only sat through Dr. Skelton's testimony today.

J Cautions state to not get into evidence that could not have been presented in their case in chief. Return the jury – jury present and in place.

DA1 Defense rests

PA Calls #31

C Swears

#31 Fred Daniel Rice – ISP training specialist overseeing the accident reconstruction for ISP. I have been with ISP 25 years. Re: accident reconstruction training & experience. There are three classifications that go along with a pedestrian auto accident: crash & carry, over and under and drop. We do calculations using the “pedestrian throw formula”. You have to know this in order to do the formula. I have written the curriculum for POST basic, advance reconstruction. I have been putting this together since 1983. I have been involved in well over 4000 accident reconstructions. I personally have been on the scene of over 400 fatal accidents in the state of Idaho and have well over 1000 hours sitting here in this seat (testifying). I have testified in two federal murder by automobile cases. Part of collision training involves debris fields. You cannot put a collision close at all based on the debris field. Debris can be moved, kicked around, it sprays. I am familiar with the momentum analysis theory – I teach it. You have to have accident reconstruction training to do an accident reconstruction. You have to look at the dynamics of what happens to the automobile – learn how to analyze the information you see at a crash site. I have knowledge as to aircraft accident reconstruction. I was called 20 years ago to reconstruct an aircraft accident. The big issue was drag factor and I assisted in that. I’d have to say there are certain things that are the same but it deals with airplanes – we deal with cars.

DA1 Objection

J Sustained

#31 I became involved in this case and reviewed a binder of photos, statements, trial transcripts, viewed the scene, listened to tapes. I am familiar with what transpired. I saw Dr. Skelton put a theory on the board.

DA1 Objection

J This is a proper question.

#31 There are several things wrong with his equation – explains – gravity has nothing to do with momentum. Momentum is weight times speed. All the momentum in this crash comes from vehicle 1 as vehicle 2 was stopped. We have to know what the after impact speed is. Gravity is never used in momentum. EX Q –

DA1 Objection

J Sustained

#31 Dr. Skelton said there is no way the blazer went up and over the top – I see induced damage – not contact damage. EX Q shows rust and must have been taken a time after the accident. The induced damage shown indicates there was a downward force on this vehicle. EX S – This shows damage at the front of the car. EX R – There is damage here showing that the

vehicle stopped when it caused it (damage) This is the deepest damage which tells me this is where the vehicle stopped. EX #20

DA1 Objection

J Sustained

#31 EX #23 shows debris in the lane – I see a lot of debris and it doesn't tell me where the point of impact happened.

DA1 Objection

J Sustained

#31 I don't agree with the point of impact with Ms. Larsen as provided by Dr. Skelton – it's physically impossible for the vehicle to strike that person there when traveling 27 mph and traveling 6'. This is not a carry – this is a throw so it would only be a matter of 8'. Dr. Skelton talked about a freefall and in this case it's not a freefall – the body was thrown to the ground and it would have happened much faster than he testified to. Dr. Skelton is not correct with his theory re: left side tire marks.

DA1 Objection

J Sustained

#31 I have had training re: perception/reaction training. Perception and reaction are not all one thing. Perception is you realizing something. Reaction is that you physically are doing something. It's not perception/reaction – it's perception and then reaction. I heard Dr. Skelton testify as to Honda impact – he said blazer was accelerating around and didn't have time to react to the vehicle in the road – he saw the vehicle.

DA1 Objection

J Sustained

#31 1.5 reaction/perception average time is not accurate. There is no average reaction/perception time in the world. There are no two people who see things and react to them in the same way.

DA1 Objection

J Sustained

#31 If the tire were up on top of the Honda there would be no visible paint under the blazer.

Log 3733 – Tape change to Tape 62306 Log 0143

The tires would life the undercarriage of the blazer.

DA1 Objection

J Sustained

I've been out to the accident scene. I disagree that the vehicle would not have rolled with the wheels in the ditch. The center mass of a vehicle that size would roll over.

XE#31 I'm a master instructor – I have no masters degree and I have no master in physics. I have been employed with ISP for 25 years. I have been an instructor since 1984. I did not come up with the classifications for pedestrian/auto accident. I learned these by Jerry Eubanks. This is taught to anyone in accident reconstruction. I learned my formulas in accident reconstruction. I worked on an aircraft accident reconstruction assisting with drag factors. They used me on my expertise of drag factors.

RD None

J Witness excused

PA Nothing additional

DA1 We may have sur-rebuttal

J Case has been submitted – the rules don't allow for such. Recess to discuss time frame with counsel. Admonishes jury.

Log 0394

J Back in session

DA1 The Skeltons' left. I can get them back in the morning.

J I have decided to allow the sur-rebuttal as to the physics issues. We'll be back tomorrow at 8:30 to go over instructions and can have Mr. Skelton testify when we came back in – then we can have closing instructions which I ask counsel to limit to 1 hour each then we'll provide the case to the jury.

DA2 I have a motion for mistrial – we can dismiss the jury first.

J Return the jury – jury present and in place.

Log 0483

J Excuse the jury for the evening – we'll work some more this evening and in the morning – I ask the jury to return at 10:00 am for final instruction and closing argument – admonishes jury.

Log 0525

J The jurors have cleared the courtroom.

DA2 Motion for mistrial – based on the rebuttal testimony of the police officer. This became trial by ambush. Many months ago we asked for the basis for any expert testimony to be presented. *Thompson v. Calderone*, 9th circuit decision – it is a violation of due process to submit two theories in the case. There has been a due process violation. This whole trial by ambush - case law requires that we be given basis for any expert testimony.

PA I think you should deny the motion.

J Comments – The testimony of Rice was to be confined to true rebuttal testimony. I'll note for the record the concerns re: Mr. Rice and Dr. Skelton. Recess for the day – counsel to return at 8:30 am

Log 0771

Day 11 – September 6, 2006 – Tape 62306 – Log 0771

J Back in session –. The defense will have an opportunity to present sur-rebuttal

DA1 DA3 will proceed with sur-rebuttal testimony of Dr. Skelton.

J Discussion re: instructions

PA No objections to jury instructions

DA2 Motion to continue this matter due to what has transpired in our instruction conference. The state filed jury instructions previously as to second degree murder with no lesser included charges. We tried this case as an all or nothing case. Now in an off the record, in chambers meeting this morning the State decided to include a lesser included voluntary manslaughter – the court is giving involuntary manslaughter and instructing as to vehicular manslaughter. The defendant is entitled to due process and we're entitled to represent him to the best of our abilities. To change the rules at this point is somewhat akin to trial by ambush. As a matter of judicial estoppel the state should not be allowed to do this. The purpose is to revise closing argument, research and consider the intricacies of the homicide statute. It was complicated enough when we just had the charge of second and implied malice. This was literally a bolt out of the blue when it happened in chambers this morning. Even if we could reconvene tomorrow morning it would allow our team to come up with ways to address the intricacies of these murky.

PA Object to continuance – proceed today.

J It is appropriate to make the record clear. The Court always struggles to make the instructions clear. Our Idaho homicide law is difficult to interpret and difficult to apply. We discussed the jury instructions briefly and to my surprise neither side indicated their desire to use the lesser included offense – it was an all or nothing. I worked until about 8:00 pm last night putting together the instructions and this morning the state became concerned and indicated they wanted the lesser included offense. Once there is a request to include the charges supported by the evidence the court is required to do so. That's the reason we're starting here at almost noon and not 10:00. I am sympathetic to both sides who now have to argue re: lesser included offenses. RE: Porter decision - necessarily includes instruction as to manslaughter. The legal ramifications of the charge should have been considered by the defense. The jury has been here a couple of weeks now and has listened to the evidence. I'm not inclined to continue. RE: jury trial time frame. We'll proceed forward. I note the objection to all the included offenses that the court has decided to give to the jury.

DA2 Comments re: instructions given and not given.

PA No comments

J The court has chosen the instructions based on the testimony in this case. Note the objections and the instructions will proceed as noted. Return the jury – jury present and in place.

Log 2280

C Swears

#29 (William Skelton) Office Rice, ISP said I used the wrong equation – I learned this principal of physics taught in high school. I have done this type of work for 35 years and have probably used this equation for 40 years. I have used this conservation momentum equation in every accident reconstruction. This is also used by other persons in this field that are engineers. The equation he used is a deviation of the equation I used – explains. The equation he testified to is the second part of the equation I used. The process I used is a basic fundamental of physics. The equation offered by Mr. Rice is no different as to direct impact than mine is – with the second vehicle stopped.

XE None

J Witness excused

DA3 No other rebuttal.

J The case is submitted

Log 2635

J Instructs jury

Log 3437 – Tape change to Tape 62307 Log 0001

J Continues instructing jury. Recess for lunch – return at 1:45 pm – admonishes jury.

Log 0293

J Back in session – before the jury makes the request to view videos I need to know where to tell the bailiff to properly cue it up. Return the jury – jury present and in place.

Log 0378

PA Closing statement –(2:00 pm)

DA1 Objection – misrepresents the evidence

J It's up to the jury to say what the evidence shows.

Log 1292

PA Continues closing statement (2:26 pm)

Log 2076

DA1 Closing statement (2:45 pm)

PA Objection – misstates the evidence.

J jury is to determine the facts.

Log 2453

DA1 Continues closing statement (2:53 pm)

Log 2877

PA Rebuttal argument (3:01 pm)

Log 3480 – tape change to tape 62308 Log 0001

PA Continues rebuttal argument

J Case submitted

C Swears bailiff for deliberation and draws jurors #54 Perman and #78 Woods as alternate jurors.

J Explains alternate juror procedure to jurors #54 and #78 – admonishes jurors. The Juror is **out for deliberation 3:20 pm**. Counsel to remain within 15 minutes of the courthouse. I want to make sure the bailiff is properly advised re: cuing of exhibits (audio/video).

Log 0299

Day 12 – September 7, 2006 – Tape 62309 Log 1253

J Back in session – I have been advised that the jury has reached a verdict – the defendant and counsel are all present. Advises persons in court to refrain from demonstration of emotion or outbursts and none will be tolerated. Return the jury – jury present and in place.

Log 1328

C Reads verdict (3:15 pm)– **guilty all three counts**

PA No poll

DA1 Requests poll

J Polls jurors – all indicate agreement with verdict. Jury out of courtroom. Sentencing set November 17, 2006, 8:00 am – PSI Ordered.. Defendant is remanded to the custody of the KC Sheriff.

PA Does the court find as a matter of law that part II has been found?

J Explains re: Part II?

DA1 I need minute to talk to my client.

J Recess.

Log 1531

J Back in session

DA1 We're prepared to have the court make the determination.

J Part II, weapons enhancement – counts II and III could not have been established without the deadly weapon so therefore the enhancement has been established. Sentencing November 17, 2006, 8:00 am.

PA/DA1 Nothing further

J Recess

Log 1596

STATE OF IDAHO
COUNTY OF KOOTENAI
3.20.19
9/7/19
[Signature]

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, vs. JONATHAN WADE ELLINGTON, Defendant.	CASE NO. CR-06-1497 VERDICT
--	--

We the Jury, duly impaneled and sworn to try the above-entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is Jonathan Wade Ellington guilty or not guilty of Second Degree Murder ?

Not Guilty _____ Guilty X

If you unanimously answered Question No. 1 **"Guilty"** then you must skip to Question No. 5. and answer that question. If you unanimously answered Question No. 1 **"Not Guilty"**, then proceed to answer Question No. 2.

QUESTION NO. 2: Is Jonathan Wade Ellington guilty or not guilty of Voluntary Manslaughter ?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 2 "**Guilty**" then you must skip to Question No. 5. and answer that question. If you unanimously answered Question No. 2 "**Not Guilty**", then proceed to answer Question No. 3.

QUESTION NO. 3: Is Jonathan Wade Ellington guilty or not guilty of Vehicular Manslaughter with Gross Negligence ?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 3 "**Guilty**" then you must skip to Question No. 5. and answer that question. If you unanimously answered Question No. 3 "**Not Guilty**", then proceed to answer Question No. 4.

QUESTION NO. 4: Is Jonathan Wade Ellington guilty or not guilty of Vehicular Manslaughter without Gross Negligence ?

Not Guilty _____ Guilty _____

Proceed to question No. 5 and No. 6

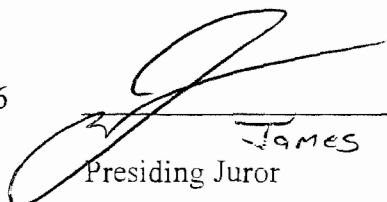
QUESTION NO. 5: Is Jonathan Wade Ellington guilty or not guilty of Aggravated Battery upon Joleen Larson?

Not Guilty _____ Guilty X

QUESTION NO. 6: Is Jonathan Wade Ellington guilty or not guilty of Aggravated Battery upon Jovon Larson?

Not Guilty _____ Guilty X

Dated this 7 day of September, 2006


James Bess
Presiding Juror

State of Idaho
County of Kootenai
Filed 3/17/16
At 1:00 o'clock
CLERK OF THE COURT
BY: [Signature]
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

Case No.

CRF C106-1497

ORDER FOR EVALUATION(S)
AND SETTING SENTENCING

vs
Jonathan Wade Ellington
Defendant.

The above named defendant having - [] pled guilty in this matter, [X] been found guilty by jury trial: Second Degree Murder - Aggravated Battery
IT IS ORDERED that not later than forty-eight (48) hours after the date of this order you must contact Probation & Parole, 202 Anton, Coeur d'Alene, Idaho (208/769-1444) to schedule your presentence interview. A presentence investigation report is ordered, and is to be filed with the court seven days prior to the sentencing date below.

IT IS FURTHER ORDERED that your continued release is conditioned upon your making and keeping your appointment with Probation & Parole, and obtaining any or all of the following evaluations. You must obtain any evaluation checked below.

- ☐ Psychosexual Evaluation
☐ Substance Abuse Evaluation
☐ Domestic Violence Evaluation

YOU ARE ORDERED to appear for sentencing on Nov. 17, 2016 at 8:00 a.m.

DATED this 7th day of September, 2016.

Judge [Signature]

CERTIFICATE OF MAILING

I hereby certify that on the 7 day of September, 2016, copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney: Taylor

Defendant: _____

Probation & Parole: Fax 769-1481

Prosecuting Attorney: Vepraken

Other: _____

<input checked="" type="checkbox"/> In Court	<input type="checkbox"/> Interoffice	<input type="checkbox"/> Mailed
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CLERK OF THE DISTRICT COURT KOOTENAI COUNTY

BY: [Signature]

Deputy

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2006 SEP 18 PM 2:42

CLERK-DISTRICT COURT
Cindy O'Billy
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497
Fel

MOTION FOR JUDGMENT OF
ACQUITTAL AND/OR
RECONSIDERATION OF MOTION FOR
MISTRIAL AND/OR MOTION FOR NEW
TRIAL

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender, and hereby requests the Court set aside the Jury Verdict and enter a Judgment of Acquittal and/or reconsider the denial of Defendants Motion for a Mistrial and/or order a New Trial in the matter. A brief in support of the motions will be forthcoming.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 30 Minutes

DATED this 18 day of September, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

Anne C. Taylor
ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

MOTION FOR JUDGMENT OF ACQUITTAL AND/OR RECONSIDERATION OF MOTION FOR
MISTRIAL AND/OR MOTION FOR NEW TRIAL Page 1

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CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 18th day of September, 2006, addressed to:

Kootenai County Prosecutor

Lisa Beeler

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED: 196

2006 SEP 18 PM 2:42

CLERK DISTRICT COURT
Cindy O'Kelly
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497
Fel

MOTION TO RELEASE PROPERTY

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender, and hereby requests the Court order the jail to release all of Jonathon Ellington's personal property currently booked in as such at the jail. It is further requested that the property be released to Mr. Ellington's fiancée' Anna Thomas.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 10 minutes.

DATED this 18 day of September, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:

Anne Taylor
ANNE TAYLOR

DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 18th day of September, 2006, addressed to:

Kootenai County Prosecutor

Lisa Beeler

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

IDAHO
KOOTENAI
CLERK
COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

vs.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497

ORDER TO SHORTEN TIME

The Court having before it the Motion To Shorten Time and good cause appearing, now,
therefore

IT IS HEREBY ORDERED that the time required for the filing of the Defendant's
Motion be shortened.

DATED this 22nd day of July, 2006.

JP Luster
JOHN P. LUSTER
DISTRICT JUDGE

ORDER TO SHORTEN TIME

Page 1

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 17 day of July, 2006 addressed to:

~~Kootenai County Jail (by fax)~~

Kootenai County Public Defender 446 1701

Kootenai County Prosecutor 446 1833

ORDER TO SHORTEN TIME

Page 2

 ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 446-1800

ASSIGNED ATTORNEY
ARTHUR VERHAREN
Deputy Prosecuting Attorney

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED

2006 NOV 28 AM 11:47

CLERK DISTRICT COURT


DEPUTY

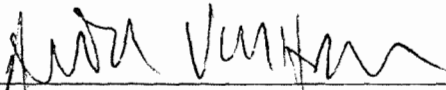
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CRF06-1497
)	
Plaintiff,	)	PLAINTIFF'S
	)	SENTENCING MATERIALS
vs.)	
)	
JONATHAN W. ELLINGTON,)	
)	
Defendant.)	
_____)	

The State, by and through Arthur Verharen, Deputy Prosecuting Attorney, hereby submits the following materials for the Court's consideration in sentencing herein:

1. Copy of letters from friends and family of Vonette Larsen.

DATED this 27 day of November, 2006.


ARTHUR VERHAREN
Deputy Prosecuting Attorney

PLAINTIFF'S SENTENCING
MATERIALS:

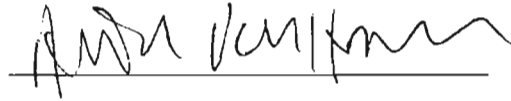
PAGE 1

368

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of November, 2006, a true and correct copy of the foregoing was caused to be mailed or sent interoffice mail as follows:

PUBLIC DEFENDERS OFFICE
I.O.M.

A handwritten signature in black ink, appearing to read "Anna Van Horn", is written over a horizontal line.

PLAINTIFF'S SENTENCING
MATERIALS:

PAGE 2

To the Honorable Judge Luster,

I don't know where to start, or if there is enough paper to come to an end on how this has affected my family and I. My family life as I knew it has ended; he killed a part of every one of us on January 1st. My best friend, wife and mother of my children was run down, killed and smashed out of our lives. My family has been torn apart. The axis of our lives has been removed and as a result the rest of us have fallen apart.

For the first two and a half years of my grandson's life, my wife was like his Mother. When he was finally able to talk he would say you're the best Grandma in the whole wide world ever ever again. For days after the wreck he laid lifeless on the floor of my house, where before he was so full of life. Not only was she my kids' mother, but their friend which all the other kids loved as an equal. She was like one of the girls going out and enjoying life with them.

As for me she was my best friend and my wife, someone who can never be replaced. She was one of a kind, and could do anything right beside me. Snowmobiling, hunting, hiking, riding 4 wheelers, she was my beautiful tom boy. For 26 years we were together, sure there were some rough times, but the good times out weighed the bad. You only get one soul mate, she was it, and now she's gone. Again, my life has ended as a part of me was murdered that day as well.

I could keep going on as I said, but you have seen and read John Ellington's past record as I have, so you know this was not a one time true mistake. It's another repeat offender that just keeps offending. I just wish it wasn't my wife whose life was taken to bring him to the courts attention. So here I beg and plea that you don't let this ever happen to another family and put his behind bars for **LIFE**. No one deserves to go through what we have.

Joel Larsen

Where do I start?

Jovon called me and left a message and wanted me to write something up about her mother. I didn't get back with her about it. Four days later Joleen calls me and she wants me to write something about her mother. My response to Joleen is yes I can but I'm afraid you won't be able to read the tear stained ink. I could start from the first day I met her and tell you all, stories that would make you laugh, make you cry. What Vonette and I shared together I would never share with you because had you ever met this beautiful woman, super mom, you would have never taken her from her three beautiful girls and loving husband. The hurt and pain that you put in this families life is indescribable. I wish so very badly that I could turn back the clock to that day and just place the girls and Vonette all at home at the same time, safe with Joel, and far away from you. I don't know why you would want to hurt anyone let alone Vonette or this family. She died so very young, what a shame.

I know this letter doesn't do her justice. She was my best friend, my sister, and my heart hurts and misses her so very badly. I want to say some very hurtful things to you and say I hope you get what is coming to you, but you will never feel the pain that this poor family has felt. God, she was an awesome person and a great mother. How do I end this?

FOR GODS SAKES WHY MAN WHY?

Kathi

to whom it may concern;

Vonette was a wife, mother, co-worker and special friend.

Vonette was a person who went the extra mile for the resident at sylvan house. the resident miss and still talk about her.

I watched her kids grow upas a mother of two grown children myself, we had a lot to talk about. Vonette was a concered mother who wanted to protect her children as much as possibleshe also wanted them to know that mistakes can and do happen.....but to learn from those mistakes.

I still miss hearing "Hey its coffee time" when we would get a cup of coffee and talk over things that were happening in our lives... she is missed by all.

Hazel Bergher
housekeeper/ psa
Sylvan house, Hayden, ID

to whom this may cocern.....

this is a letter to allow me to put down in words of who Vonette Larson was and will always be in my eyes...I had the pleasure of working with her for 5+yrs and that time we had shared our trimuphs and faults with each other.

We talk of our kids, husbands, work, everyday live. She would always stop and see me in the kitchen, maybe eat some lunch on her break. We would talk over how the day was going....we would share some laughs and shed a few tears. I always felt better afterwards. She was the type of person, that you would always want around you at work. I had the pleasure of watching her daughters grow up....Jovon become a wonderful mom, Joleen a beautiful young woman, and Jamie, who was always eating grapes with whip cream....become a pretty teenager.....

I remeber one time on one of Vonette breaks came down to tell me how her husband Joel took the news of Jovan being pregnant.....and having a diffcult time of accepting that his child was having a baby.....then in the end after Jovan had a baby boy Zachary..... then Joel went out and bought a camouflge "oneies" outfitso Joel and his new grandson could go and play together...

Vonette would take care of Zachary so Jovan would finish school....she would bring him to work and show him off to the residents.....and the employeeess too.

The residents at my work just loved Vonette she would always go the extra mile for them...

When they heard of the death of Vonette,,,,,they were quite upset...that something like that could happen....Vonette is very much missed by the residents and surly missed by me.

To this day I still have not been able to drive down Scarello Rd....knowing that is where she was killed. Vonette Larson was just protecting her children.....

Vonette Larson was a co-worker, wife, mother, and grandmother that is missed very much by all

Jo Hunter
Lead Cook
Sylvan House Hayden, ID



To Judge Luster,

My mother was not any ordinary mother. She was one who all liked and loved. She would always go the extra mile to make everyone happy. Unfortunately she was taken from all of us without any warning or any good byes. The last sight that I seen of my mother is not the one that any one would want to see.

Vonette, my mother, a wife, a best friend was tragically taken from us on January 1, 2006. No one would have ever guessed that this would happen to her or even our family. She would always do what she could for other people and think of her self last. She loved to always help the elderly people. At times she was working 3 jobs, two of which were assisted living houses and she never let those old ladies and some men down. If she told them she would be there at a certain time and date you could bet your money she would be there at least 10 minutes early. No matter what the day or time was. She also would run errands for the older people at the homes because they were unable to drive and some of them didn't have family around to do it.

My mother was a big tom boy. It was so fun though. She could do just about anything my dad can do. She would run a chain saw when we were out getting wood, she can shoot a gun, a bow, ride snowmobiles, 4 wheelers you name it and she would always try it. Unfortunately my mother was killed way too early in life. She had so much ahead of her to see and do. I went to my first prom this

year and she was not there to see me. I also graduated in June. My little sister is still in school so she will also be graduating here in the future.

She was surprised on February 25, 2002 with a grandson names Zachary. She absolutely loved this little boy, and he loves her too and still talks about her and how some mean guy took her from him. She unfortunately missed his 4th birthday, his first day of Pre School and all the things that he is learning how to do. He would always say that she was the bestest grandma in the whole wide world ever again. It was the saddest thing to have to see Zac when he found out what happened to grandma. He was so sad and not even wanting to play for like three days.

Not only was my mother taken from me but my best friend. They did everything together. Hunting, hiking, fishing, snowmobiling, 4-wheeling anything my dad did my mom could do too.

This whole thing has ripped our family apart. We are left with a hole in our heart and it will be there forever. To see my mom lay on the road lifeless in her own puddle of blood, while we watch Ellington drive away. The only thing my mom was trying to do was protect her kids. How could a man do something like this? He has a history in violence and unforgivably my family is the one that has to suffer from this guy who could care less about other people's life.

There is not a day that goes by when I don't think of her. Wonder why? Why us? Why do the good people always have to feel the pain of the ones who don't

care? She did nothing to be run down in the road and killed. Except trying to protect the ones she loved. So judge I ask you to give him what he deserves because nothing will ever be able to bring our mother, friend, wife or grandmother back to us or help with the horror images that we are left with in our heads from this tragic day that will never be forgotten by me or a lot of other people who were close to her or even that just knew her smiling face. There will never be one to replace a mother like her. She was a one of a kind! Please judge, do us some justice in the court room. Put him away where he belongs.

Jileen Hansen

To Judge Luster

With my mother now gone, there are a lot of things that have made it hard to move on in the everyday life such as going to school coming home and her not being here for me or my family. Even waking up in the mornings and her not there to wake me up to get ready for school, or taking me there, or giving me a kiss good night and saying "I love you". It really puts an impact on my life. Seeing my friends and them having a good healthy life with there mothers, and I can't do that now. Seeing her cloths and our family photos makes me cry. It also has put an impact on my life by what I'm able to do, and how I do things, decisions and things like that. It really makes it hard. She is loved and missed by everyone. Her smile that would brighten the whole room, she was always happy. And shopping she would always help me out.

In the winter we would always go on snowmobile rides up in the mountains and would race and things like that. And in the summer time ride the 4-wheelers around just doing what normal families would do. Also in the summer time we have a "Special Spot" that we would go and skip rocks and tan that was always fun.

Janie Larsen

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

CLERK OF DISTRICT COURT
COUNTY OF KOOTENAI } SS
FILED

2006 NOV 28 PM 2:47

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497
Fel

MOTION TO RELEASE BLAZER


COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender, and hereby moves the Court for an order releasing the Blazer now in impound at the Kootenai County Sheriff's Office.

Counsel requests that this motion be set for hearing in order to present oral argument, evidence and/or testimony in support thereof. Requested time is 10 minutes.

DATED this 28 day of November, 2006.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 28 day of November, 2006, addressed to:

Kootenai County Prosecutor

Ami S. White

CR 06-1417

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

196

2006 NOV 29 PM 1:32

CLERK DISTRICT COURT

[Signature]
DEPUTY

To the Honorable Judge Luster

Re: Jonathon Ellington's sentencing
November 28, 2006

Dear Judge Luster,

When Vonette came to work for us seven years ago, we were apprehensive. We are a family owned and operated business, my sister and I work for (with) our mom, and it was scary to think of bringing a stranger into our midst. Vonette wasn't a stranger for long though. In no time she was calling our mother "Mom" and referred to herself as "the other daughter," I'd say the "good daughter," the one who couldn't wait to decorate the store for holidays, the helpful and cheerful one, the one who wore reindeer antlers and brought me chocolate covered cherries at Christmas time (she knew they were my favorites and she never missed a year).

We are a beauty supply store and Vonette worked as a hairdresser in our salon for six years, so we got to know her well. She really was like family. One of the things I admired most about her was her way with her elderly clients. She was so good to them and they loved her. She truly cared about them all, in fact we would try to raise her prices so she could make a better income, but she didn't want them to have to pay more. I heard that she often gave free services at her other job (she was a part-time hairdresser at the Sylvan House). She was a very kind hearted person.

I've lost other people in my life but none have hurt this much or were missed this much. The day after Vonette was killed we went to work to make phone calls. We didn't want her clients to hear this terrible news from the media, we felt it our duty to break it to them gently. They would cry and then we would be crying, again. For several months our salon was dark. It hurt to even contemplate bringing someone new into Vonette's space, but we had to have a working salon to sell the product we sell. My boyfriend is working in there now and so we are back to being "family," I think Vonette would be

pleased. But still, it is not the same, there was only one Vonette. Every so often someone will come in, nearly a year later, and they don't know about what happened, and we have to break the news and for some reason it is harder than ever to talk about it. I feel breathless and I grope for the words.

I think of Vonette when I wake up in the middle of the night; my mom says the same thing. I miss her. She should be here helping me decorate and what about those chocolate-covered cherries? What about New Years Eve? Every year, for twenty years, at the end of the workday on New Years Eve, we have a glass of champagne and make a toast. We toast the past year, and the year to come. We have our group hug, and we say "see you next year." That was the last time we saw Vonette. New Years Eve doesn't fall on a workday this year, and it's probably a good thing. I don't think we're ready.

I think about Vonette's family and what they have lost and I can't even imagine. In an instant, everything changes. I think about her little grandson Zack. I have two little granddaughters who adore me, just like Zack adored his Grandma. I have children and siblings, parents and friends, and a man who loves me. Vonette had all of that and now they have to go on without her.

I worry more than I used to, I have more to worry about now. I know how fast loved ones can be taken from us and I can't seem to turn off my fear.

Shelene L. Weholt

CRO6-1497

STATE OF IDAHO
COUNTY OF BUTTE
CLERK

2006 NOV 29 PM 1:32

CLERK DISTRICT COURT
Mrs. [Signature]
DEPUTY

November 27, 2006

To The Honorable Judge Luster;

In reference to the sentencing of Jonathon Wade Ellington for the senseless destroying of an innocent woman's life.

My name is Marjorie Johnson, owner and manager of Centre Beauty Supply where Vonette Larsen was employed for six years prior to her death.

Vonette Larsen was a friend, and an employee of mine. She was first and foremost a friend. She called me Mom from the beginning of our six years together. I always thought of her as "my other daughter" and she always identified herself to customers as such.

Vonette was the warmest most caring person with her customers as I have seen in a hairdresser. She truly cared about people and was not afraid to let them know with gruff joking, but sincere words.

Vonette was a very caring, protective Mother. Her children came first with her. She was always there for them, I was glad to work around their school schedules, and she was always available to them by phone. Her husband Joel meant the world to her and she was an active partner in his pursuit of 4 wheeling, snowmobiling, or anything he liked to do.

When Vonette's oldest daughter Jovan delivered a grandson to Vonette and Joel, it was as if no one was ever a Grandma before! She was so delighted with Zak and would baby-sit as often as she could. Both Joel and Vonette doted on the little guy. Jovan told me a little story of how she and Zak were lying on the bed (after Vonette was gone) and Zak looked at Jovan and said, "I miss Grandma". Jovan just broke down and of course, Zak didn't understand where Grandma went! How sad and tragic that he will never remember his Grandma. What a loss in a baby's life.

The last time I saw her was New Year's Eve 2005 when we all had a group hug and I said "See you next year Vonette". Well she didn't get to see much of 2006 and again, what a tragedy!!

Vonette's daughters will miss all the things that a mother gives in a lifetime. I have two daughters and have lived long enough to see my grandchildren grow up and some of them marry and have children. Vonette missed that. She was much too young to die and is sorely missed by me and I know by all who knew her. We all loved her.

Sincerely
Marjorie Johnson

CRO6-1497

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2006 NOV 29 PM 1:32

CLERK DISTRICT COURT

DEPUTY

To the Honorable Judge Luster
Re: Jonathan Ellington's Sentencing

November 29, 2006

Dear Judge Luster,

Vonette Larsen came into our lives six years ago last September, when she applied for a job as a hairdresser at our family owned beauty supply store, where my sister and I work for our mother. As a family business, we were a bit cautious of who we wanted to hire to be a part of this, which we had created.

Along came a cheerful, good-hearted woman who immediately became a part of our "family."

Vonette was a big presence in our lives. She was always, ALWAYS in a good mood...and her clients, especially the older ladies, absolutely LOVED her, because she not only made them look good, she made them feel good as well.

We had children who were roughly the same age, so we often shared our frustrations "and joys" that come with raising teenagers.

She loved the holidays...always coming in to work with holiday socks on her feet and reindeer antlers on her head, or bunny ears...whatever was in season. The rest of us had become a little burned out when it came to decorating the store for the holidays, so Vonette took it upon herself to be our official decorator. She actually enjoyed it!

Vonette was taken from our lives on New Year's Day. One man made the decision that she would never walk on this earth again. The hole that this has left in all of our lives is enormous.

After she died, it seemed as though the enthusiasm that we felt for the business died for a while too. We knew that the store must go on, but for a long time it was a very sad place to be.

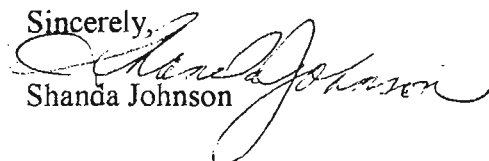
This last year my daughter, and Vonette's middle daughter, were both seniors in high school. I was there to take pictures when my daughter was all dolled up for her Senior Prom, but Vonette was not there to take pictures for her daughter's Senior Prom. Last June, I sat in the audience and watched as my daughter graduated from high school. Last June, Vonette's daughter graduated from high school, but Vonette was not there sitting in the audience.

So many occasions will come and go, for years to come...momentous occasions, when daughters really need their Mom. There will be birthdays and there will be holidays. There will be Mother's Days and weddings. There will be babies... but Vonette will not be there...and it breaks my heart.

We miss Vonette.

Sincerely,

Shanda Johnson



 ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-1971
Telephone: (208) 446-1800

ASSIGNED ATTORNEY
ARTHUR VERHAREN
Deputy Prosecuting Attorney

CLERK OF DISTRICT COURT
COUNTY OF KOOTENAI } SS
FILED

2006 NOV 29 PM 4:26

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CRF06-1497
)	
Plaintiff,	)	PLAINTIFF'S
	)	SENTENCING MATERIALS
vs.)	
)	
JONATHAN W. ELLINGTON,)	
)	
Defendant.)	

The State, by and through Arthur Verharen, Deputy Prosecuting Attorney, hereby submits the following materials for the Court's consideration in sentencing herein:

1. Copy of letters from family members.

DATED this 29 day of November, 2006.


ARTHUR VERHAREN
Deputy Prosecuting Attorney

PLAINTIFF'S SENTENCING
MATERIALS:

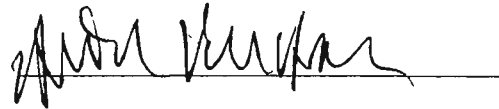
PAGE 1

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of November, 2006, a true and correct copy of the foregoing was caused to be mailed or sent interoffice mail as follows:

PUBLIC DEFENDERS OFFICE

I.O.M.



PLAINTIFF'S SENTENCING
MATERIALS:

PAGE 2

406

Her family now suffers. Her daughter
 one from without & mother
 more not there for the birthday,
 graduations, weddings & her girls.

A husband whom now had to find a new mate. A husband who had loved his wife they had dreamed of together. Of how a man that must feel torn between the loss of his best friend & the ache of trying to find a new mate to breed and build good with. A family that doesn't want to let go, but has been forced to.

A mother & father that had to get
the worst news
possibly receive: "Your daughter
has been killed!"
You know, it
was sometime Dad's birthday that
day. She didn't get to check in
with him that evening, tell him
she loved him.

A fine shawlquing & Christmas
combr. School & there, if we all
must go on.

I am the sister that now will not
see the dream come true of the
lives of us (Donette & I) leaving our
men at home so we can spend the
day shopping, on having lunch, when
we are ~~living~~ and ~~riched~~.

I am the Dieters that is now alone. I
the other brothers on Dieters to guard
old with,

pieces that can't be seen to look at me
or talk with me because I removed
them from their mother.

The memories are all we have of
Donette now.

I want to remember that justice
is right in this world. That
Mr. Ellerton has been found by
his jury to be guilty of taking
a life. ~~Not~~ found by others,
people - not just our family &
our something unfortunate. &
what price should a person like
that pay - the price of his own
life? Should his family have to
bear the empty feeling of loss
sure! why ~~not~~ Death for Death.

On, do we as logical taxpayers
 choose to pay for Mr Clinton to
 eat & sleep in comfort, to smoke
 cigarettes - on us. To be protected
 with a bad & useless husband

day & night - year after year.
 More - Choices.

"Mr. Ellington had many choices. He chose to take a wife. Now he may seek at the situation and wish he would have chosen a "different turn".

Now the choice is with the people. People that are tired of crime, alcohol addiction, meth addicts, tired of chance after chance that we the people give.

Let's set an example of Mr. Ellington. Do unto others as you would do to yourself.

Treat others as you want to be treated.

I love you Lonette! You were the best sister, mother, wife, daughter, granddaughter. You were funny and you had awesome teeth.

You'd smile was great. You held your family together. You that the Lord had taken you home and that from heaven you can help comfort your daughters especially Yvonne - like missed you more than words can say. She is truly lost with out you.

Will see you in heaven someday
 To All Families & Friends Hello!

Please have these read at
 Sentencing of Ellington.

Bill Douglas
 C/o Yvonne
 501 N. Government Way
 Coeur d'Alene, ID 83815

From

Lonette's Sister -

Sandy Cobb

vonette L. Larsen

①

Jonathan Elington-

I don't even know what to say, I can't find the words I want to use, and no matter how many times I write this, it doesn't feel like I got my point across. In my eyes you are a guilty, unforgivable man. I can't believe you would have the guts to run somebody over and think you can get away with it. Alls Vonette ever did to you, was try and stop you from harming her children, because you cannot restrain your anger apparently, and in reward, she was murdered. Imagine if it was your wife who was run over, you wouldn't care who it was, or what the case was, you would want them in jail forever, because they took something away that meant the world to you. So don't complain about serving time, you killed somebody. I hope you are locked up for a long, long time. How can you live knowing you killed someone, and broke so many hearts. And you have walkmen's out for your arrest everywhere. Don't you feel dirty, horrible, hated, and absolutely cold inside?! And why do you try and make the world feel sorry for you by saying your name has been taken off the list. You did nothing to get your name taken off the list.

(2)

Face it, you are gonna be in jail for
quit a while no matter what, so
it's not even worth the trouble
to lie and try and make people feel
bad for you. Of course your fiancé
will feel bad for you and think your
innocent, she loves you. But unfortunately
your family, are the only ones on
your side, no one else's. I very strongly
dislike you, and I hope you feel horrible
for what you did. Because of you, all
I have left of my Aunt, are memories.
If the Judge was smart, he/she would
lock you up for life! Alcohol, Road rage,
and being scared is no excuse for
killing an innocent person.

From Vonette's
Niece -
Rayleen Cobb

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED:
AT 10:00 AM
CLERK DISTRICT COURT

To-JUDGE

Received Dec-04-06 10:41am From-

BOX# 446-1117

REQUEST FOR CAMERAS IN THE COURTROOM
To: Judge Luster

The undersigned requests permission to use cameras in your courtroom in the following manner:

State v. Ellington
Kootenai County Case No: CR-06-1497

In Courtroom No. 1 on Date: 12/4/06 at 3:30 p.m.

Media to be used: ☒ still camera; ☐ video camera; ☐ audio equipment

☒ I certify that I have read the Idaho Supreme Court Order which authorizes cameras in the courtroom and agree to be comply in all respects with those rules and any special conditions stated by the trial judge. I further certify that I will comply with the pool coverage plan approved by the trial judge.

☒ I certify that I have read the Idaho Supreme Court Order which authorizes cameras in the courtroom and as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team to follow and comply with those rules, any special conditions stated by the trial judge and the pool coverage plan approved by the trial judge.

Dated: 12/4/06 News Agency: Spokesman-Review
Printed Name: Taryn Brodwater Signature: Taryn Brodwater
Telephone No.: 765-7121 Fax No.: 208-765-7149

AUTHORIZATION

☐ DENIED.

☒ GRANTED UNDER THE FOLLOWING CONDITIONS:

1. Comply with the Supreme Court Guidelines.

2. _____

ENTERED: 12-4-06

J.P. Ruck

District Judge

cc: Counsel of Record

5/2/10 2011

STATE OF IDAHO
COUNTY OF KOOTENAI
9/31/06
DEPUTY CLERK
DISTRICT COURT

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2006 DEC -1 PM 3:48

REQUEST FOR CAMERAS IN THE COURTROOM

To Judge LUST Fax # (208) 446-1188 DEPUTY

The undersigned requests permission to use cameras in your courtroom in

State of Idaho v. Jonathan Ellington
Kootenai County Case No. CR-06-1497

Courtroom No. 1 on Date: 12/04/06 at 3:30 p.m.

Media to be used: ☐ still camera; ☒ video camera; ☒ audio equipment

I certify that I have read the Idaho Supreme Court Order that authorizes cameras in the courtroom. I further certify that as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team. I and they agree to comply in all respects with the Supreme Court's Order and rules, with any special conditions stated by the trial judge and with any pool coverage plan approved by the trial judge.

Dated: 12/01/06 News Agency: Kxly News 4

Printed Name: Thaty Wagon Signature: Thaty Wagon

Telephone No.: 509-324-4004 Fax No. 509-327-3932

COURT AUTHORIZATION

☐ DENIED.

☐ GRANTED UNDER THE FOLLOWING CONDITIONS:

1. Comply with the Supreme Court Guidelines
2. No photos of children or jurors.

3. equipment shall be set up in courtroom prior to commencement of afternoon law day @ 3:30pm
Also must pool video with other requesting agencies

ENTERED: 12/4/06

JP Lust
Judge

cc: Counsel of Record

to 446-1188

STATE OF IDAHO

COUNTY OF KOOTENAI

FILED:

AT 10:32

O'CLOCK

CLERK, DISTRICT COURT

DEPUTY

REQUEST FOR CAMERAS IN THE COURTROOMTo Judge Luster, Fax # (208) 446 1119

The undersigned requests permission to use cameras in your courtroom in

The State of Idaho v. Jonathan W. EllingboCounty Case No. CR 06 1497Courtroom No. 1 on Date: Dec. 4 at 3:30 p.m.Media to be used: ☒ still camera; ☐ video camera; ☐ audio equipment

I certify that I have read the Idaho Supreme Court Order that authorizes cameras in the courtroom. I further certify that as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team. I and they agree to comply in all respects with the Supreme Court's Order and rules, with any special conditions stated by the trial judge and with any pool coverage plan approved by the trial judge.

Dated: 12/4/06 News Agency: The Coeur d'Alene PressPrinted Name: Marc StewartSignature: Marc StewartTelephone No.: 664-8176 ext. 2010 Fax No. 664-0212**COURT AUTHORIZATION**☐ **DENIED.**☒ **GRANTED UNDER THE FOLLOWING CONDITIONS:**

1. Comply with the Supreme Court Guidelines
2. No photos of children or jurors.
3. _____

ENTERED: 12-4-06J.P. Luster
Judge

cc: Counsel of Record

REQUEST FOR CAMERAS IN THE COURTROOM

To: [REDACTED]

The undersigned requests permission to use cameras in your courtroom in the following manner:

Ko Co v. Effington
County Case No: CR 2006-0001497
In Courtroom No. 1 on Date: Dec 4th at 330 p.m.

Media to be used: still camera; X video camera; X audio equipment

☒ I certify that I have read the Idaho Supreme Court Rule which authorizes cameras in the courtroom and agree to be comply in all respects with those rules and any special conditions stated by the trial judge. I further certify that I will comply with the pool coverage plan approved by the trial judge.

☒ I certify that I have read the Idaho Supreme Court Rule which authorizes cameras in the courtroom and as a representative of the below listed news agency, I am authorized to bind my news agency and all members of its news team to follow and comply with those rules, any special conditions stated by the trial judge and the pool coverage plan approved by the trial judge.

Dated: Dec 4 News Agency: KREM
Printed Name: Trinity Spencer Signature: Trinity Ann Spencer
Telephone No.: 509 838 7350 Fax No.: 509 448 6397

AUTHORIZATION

☐ DENIED.

☒ GRANTED UNDER THE FOLLOWING CONDITIONS:

1. Comply with the Supreme Court Guidelines.
2. Only one video camera allowed. KXLY made first application and must pool footage

ENTERED: 11-9-06

JP [Signature]
BARRY WATSON, MAGISTRATE JUDGE

Court Minutes:

Session: LUSTER120406P
Session Date: 12/04/2006
Judge: Luster, John
Reporter: Rush, Bill

Division: DIST
Session Time: 14:51

Courtroom: Courtroom1

Clerk(s): Booth, Kathy

State Attorney(s): Verharen, Art

Public Defender(s):
Taylor, Anne
Schwartz, Christopher

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: Cr2006-1497
Plaintiff:
Plaintiff Attorney:
Defendant: Ellington, Jonathan Wade
Pers. Attorney:
Co-Defendant(s):
State Attorney:
Public Defender:

12/04/2006

15:41:29

Recording Started:

15:41:29

Case called

15:41:34

Judge: Luster, John
Calls case - PA VerHaren, DA Taylor and DA
Schwartz present with the

15:41:56

defendant

15:42:03 **Other: VerHaren, Art**
Ready

15:42:18 **Other: Ann Taylor, DA**
Ready - we do have some motions to take up today
and others will be reset -

15:42:30 read to proceed to sentencing

15:42:37 **Judge: Luster, John**
I have reviewed the PSI, letters, sentencing
documents, mediation specialist

15:43:39 report

15:44:02 **Other: VerHaren, Art**
I'm not aware of anything for the court to
consider that have not been filed

15:44:19 **Other: Ann Taylor, DA**
Nothing additiional that has not been filed

15:45:33 **Other: VerHaren, Art**
Bobbie Debauer would like to read a statement to
the court - she is the

15:45:50 grandmother

15:46:05 **Other: Ann Taylor, DA**
It's fine for her to read it from her seat

15:48:54 **Other: Larsen, Jovon**
Reads statement

15:57:19 **Other: Ann Taylor, DA**
Calls #1

15:57:40 **Other: Kathy Booth, Clerk**
Swears #1

15:57:52 **Other: Hayes, Daniel**
Clinical Psychologist - re: training and
experience. I do evaluation and

15:58:14 treatment of psychiatric disorders. I met
defendant June 27, 2006. I had

15:58:48 adequate time to complete my evaluation. We
talked about the situation he

15:59:08 was headed to court for. I had previous court
records. From what I could

15:59:45 gather his state of mind was aggitated at first
 - encounter began. There was
 16:01:07 some sort of conflict where they wouldn't let
 him pass their car - he
 16:01:23 eventually got around , stopped and approached
 the girls with yelling and
 16:01:46 slapping of the window. I think that he can be
 hot tempered. I think that
 16:01:58 he probably has a short fuse at times. Most of
 his anger is almost always
 16:02:10 when he is intoxicated. I am aware that there
 was a break in time between
 16:02:42 the two encounters. I think the anger was over
 before the seocnd encounter.
 16:03:01 Explains "fight or flight". In his case he was
 showing evidence that he was
 16:03:19 trying to get away. Had he wanted to fight he
 would have confronted them and
 16:03:55 been more aggressive. I believe that he has a
 fear of weapons from an
 16:04:25 incident when he lived in Arizona about 25 years
 of age and saw one friend
 16:04:43 shoot another. He has post traumatic stress
 disorder but when I saw him he
 16:05:04 did not meet that criteria. It is possible that
 when he would see or hear a
 16:05:29 weapon he would have a startled response. I
 believe that he would be
 16:06:24 admeanable to alcohol treatment. There is
 remorse, regret and guilt - I
 16:06:53 think he felt remorse and regret. I don't think
 he felt guilt because he was -
 16:07:10 trying to get away. His brother was killed at a
 very young age by a person
 16:07:29 driving under the influence. I think people
 react differently under stress.
 16:09:10 Some people are stone cold when you talk to them
 and others are so ridden
 16:09:25 with remorse and regret that they cannot talk.
 I don't see him as either of
 16:09:38 tem. We see this at funerals - the most stoic
 can be a basket case later on.
 16:10:02 He's so outraged and feels he's not guilty of
 what he's being charged with
 16:10:28 that he doesn't feel badly now. He's not in the
 "no remorse" category. He

16:11:46 had an alcohol problem and a temper - it wasn't
until he began using alcohol
16:12:14 that the antisocial patterns developed. He does
have some adjustment
16:12:38 problems in that he doesn't have a good work
history. He'll have a lot of
16:13:08 tim to think about no alcohol in his life.
16:13:18 XE by PA VerHaren - I interviewed him for about
3 - 3 1/2 hours - I did a
16:13:34 history and psychological testing. I came up
with some conclusions - We did
16:17:29 talk about the assaults he had - we talked a lot
about that but I don't
16:17:45 remember any specific dates. He does have a
pattern of aggressive behavior
16:19:07 and criminal behavior.
16:19:19 RD by DA Taylor - I didn't come to my office
with a criminal history together
16:19:41 with dates - we did talk about the assaults and
domestics. He did share the
16:19:53 assaults but we didn't get into specifics as to
dates. He didn't have any
16:21:25 He didn't seem like he was aggressive - he was
trying to get away
16:21:40 RC by PA VerHaren - we're not here for an
assault sentencing. His pattern of
16:22:08 behavior would assist in sentencing.

16:22:18 **Other: Ann Taylor, DA**
No other testimony

16:22:28 **Other: VerHaren, Art**
I think the appropriate sentence is a life
sentence - the appropriate
16:22:43 sentence to fix is 25 years. He's been
convicted of Murder II and
16:24:13 Aggravated assault - all violent crimes. What
happened was no accident.
16:29:15 He's got six different convictions for
aggravated assault, others dismissed
16:29:30 and one warrant out for an aggravated assault in
another state. 25 to life
16:30:00 is appropriate

16:30:12 **Other: Ann Taylor, DA**
He has remorse that someone's life is lost but

16:30:27 that is different than
 believin that he's guilty of murder. He's had a
 16:30:48 lot of frustration with the
 system but that doesn't mean he doesn't feel
 remorse. He didn't set out to
 16:31:53 hurt anyone that day. After the initial
 confrontation he felt it was over.
 16:32:10 It was a tragic chain of events that happened.
 He as trying to get away - I
 16:32:26 ask the court to look at the overall picture of
 what happened that day. He
 16:32:42 ened up back into a corner and it was a mere
 seconds. He wasn't trying to
 16:32:57 run over Ms. Larsen or hit her. The court got
 to listen to the taped phone
 16:33:15 conversation from the jail - he was told that
 someone died and that the
 16:33:43 person was a woman - he had no idea. This was a
 horrible, horrible accident.
 16:33:55 Keep in mind the goals of sentencing and
 incident that happened. His
 16:34:28 criminal history is misdemeanor assaults. The
 one consistent thing is that
 16:34:45 alcohol was a factor and needs to be addressed.
 He comes from a family
 16:35:14 background and was raised with values. He does
 have support and people who
 16:35:41 love him. His fiance was here every day. We
 understand that there is a
 16:36:27 minimum sentence but no minimum fixed sentence.
 Rehabilitation is one of the
 16:36:40 goals and he does have a lot of remorse.
 16:36:53 **Defendant: Ellington, Jonathan Wade**
 Comments - I have to live with this every day -
 nothing I can do to chage it.
 16:37:15 They chased me not once but twice, hit me, shot
 at me and their mother got
 16:37:37 run over a killed. They dont' want to take any
 responsibility for what has
 16:37:52 happened. They chased me down with guns and I'm
 a murderer? Where's the
 16:38:13 rage? I was running for my life. I would
 never kill another person. I'm
 16:38:33 sorry, can't be any sorryer.
 16:38:59 I know of no legal reason to not proceed

16:39:11 **Judge: Luster, John**
GUILTY ON JURY VERDICT- 2 counts AGGRAVATED
ASSAULT and SECOND DEGREE

16:39:42 MURDER - Comments re: goals of sentencing,
crime, circumstances and

16:41:58 protecton of society. Murder II - 25 years 12
years fixed Agg Battery - 15

16:53:03 yars 7 fixed - each case - all concurrent -
remanded to DOC - find

16:53:23 substantial substance abuse problem and
recommend therapeutic community -

16:53:44 advies of right to appeal

16:54:19 **Other: Ann Taylor, DA**
Motion for return of property

16:54:29 **Other: VerHaren, Art**
No objection

16:54:32 **Judge: Luster, John**
Granted - DA to submit order

16:54:46 **Stop recording**

 ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2006 DEC -8 AM 10:27

CLERK DISTRICT COURT

DEPUTY

82
196

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

JONATHAN W. ELLINGTON,

Defendant.

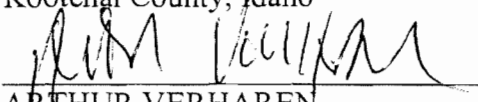
Case No. **CR-F06-1497**

MOTION TO RELEASE
PLAINTIFF'S EXHIBITS

COMES NOW, ARTHUR VERHAREN, Deputy Prosecuting Attorney for Kootenai County Idaho, and hereby moves the above entitled Court for an order releasing to the Prosecutor's office the firearm, admitted into evidence at the jury trial before Judge Luster.

DATED this 7 day of December, 2006.


WILLIAM J. DOUGLAS
Prosecuting Attorney for
Kootenai County, Idaho


ARTHUR VERHAREN
Deputy Prosecuting Attorney

MOTION TO RELEASE PLAINTIFF'S
EXHIBITS: Page 1

Prosecutor's Certificate of Transmittal

I hereby certify that on the 7 day of December, 2006, a true and correct copy
of the foregoing was caused to be mailed:
PUBLIC DEFENDERS OFFICE
I.O.M.



ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2006 DEC 11 AM 9:48

CLERK DISTRICT COURT
[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN WADE ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497

**OBJECTION TO MOTION TO RELEASE
PLAINTIFF'S EXHIBITS**

COMES NOW, the above named defendant, by and through his attorney, Anne C. Taylor, Deputy Public Defender, and hereby objects to the State's Motion to Release Plaintiff's Exhibits.

This motion is made on the grounds that this matter is being appealed and all trial exhibits need to be preserved until the appeal is exhausted.

DATED this 11th day of December, 2006.

[Signature]
ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

OBJECTION TO MOTION TO RELEASE PLAINTIFF'S EXHIBITS

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 11th day of December, 2006, addressed to:

Kootenai County Prosecutor

Lise Beale

OBJECTION TO MOTION TO RELEASE PLAINTIFF'S EXHIBITS

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 12-12-06
AT 1:45 O'CLOCK P M
CLERK, DISTRICT COURT
Barbara Watson
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	CASE NUMBER CR-06-0001497
Plaintiff,	)	Fel
)	
V.)	
	)	ORDER TO RELEASE PROPERTY
JONATHAN W. ELLINGTON,)	
)	
)	
Defendant.)	

AFTER HEARING and good cause appearing, **IT IS HEREBY ORDERED** that the
personal property of Jonathon W. Ellington currently held at the jail be released to Anna Thomas.

ORDERED this 12th day of December, 2006.

JP Luster
JOHN P. LUSTER
DISTRICT JUDGE



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing
a copy of the same in the inter office mailbox on the 12 day of December, 2006, addressed to:

Kootenai County Public Defender
Kootenai County Prosecutor
KC Jail (by fax)

Barbara Watson

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO } ss
COUNTY OF KOOTENAI }
FILED: 12-12-06
AT 1:45 O'CLOCK P M
CLERK, DISTRICT COURT
Barbara Watkins
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)

Plaintiff,)

V.)

JONATHAN W. ELLINGTON,)

Defendant.)

CASE NUMBER CR-06-0001497
Fel

ORDER TO RELEASE BLAZER

AFTER HEARING and good cause appearing, IT IS HEREBY ORDERED that the

Blazer truck belonging to Jonathon W. Ellington be released to Anna Thomas.

ORDERED this 11th day of December, 2006.

JP Luster
JOHN P. LUSTER
DISTRICT JUDGE



CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the inter office mailbox on the 12 day of December, 2006, addressed to:

Kootenai County Public Defender
Kootenai County Prosecutor
KC Jail (by fax)

Barbara Watkins

STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED: 12-14-06
AT 1133 O'CLOCK 14 M
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO	)	Case No. CR 06-1497
)	
vs.)	
	)	JUDGMENT AND SENTENCE
JONATHAN WADE ELLINGTON,)	
DOB [REDACTED])	
SS# [REDACTED])	
Defendant)	

On December 4, 2006, before the Honorable John Patrick Luster, District Judge, you, **JONATHAN WADE ELLINGTON**, personally appeared for sentencing. Also appearing were Art VerHaren, Deputy Prosecuting Attorney for Kootenai County, Idaho, and your lawyers Ann Taylor and Christopher Schwartz.

WHEREUPON, the Court reviewed the presentence report and the Court having ascertained that you have had an opportunity to read the presentence report and review it with your lawyer, and you having been given the opportunity to explain, correct or deny parts of the presentence report, and having done so, and you having been given the opportunity to make a statement and having done so, and recommendations having been made by counsel for the State and by your lawyer, and there being no legal reason given why judgment and sentence should not then be pronounced, the Court did then pronounce its judgment and sentence as follows:

IT IS HEREBY ORDERED AND IT IS THE JUDGMENT OF THIS COURT that you, **JONATHAN WADE ELLINGTON**, having been found guilty of the criminal charge(s) stated in the Information on file herein as follows:

COUNT I, MURDER IN THE SECOND DEGREE, I.C. §18-4001, 02, 03,
COUNT II, AGGRAVATED BATTERY, I.C. §18-903(a)(c), §18-907(b) and
COUNT III, AGGRAVATED BATTERY, I.C. §18-903(a)(c), §18-907(b),
felonies.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the charge of **COUNT I, MURDER IN THE SECOND DEGREE, I.C. §18-4001, 02, 03** you are sentenced pursuant to Idaho Code § 19-2513 to the custody of the Idaho State Board of Corrections, to be held and incarcerated by said Board in a suitable place for **a fixed term of twelve (12) years to be followed by an indeterminate term of thirteen (13) years for a total unified sentence not to exceed twenty five (25) years.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the charge of **COUNT II, AGGRAVATED BATTERY, I.C. §18-903(a)(c), §18-907(b)** you are sentenced pursuant to Idaho Code § 19-2513 to the custody of the Idaho State Board of Corrections, to be held and incarcerated by said Board in a suitable place for **a fixed term of seven (7) years to be followed by an indeterminate term of eight (8) years for a total unified sentence not to exceed fifteen (15) years.**

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the charge of **COUNT III, AGGRAVATED BATTERY, I.C. §18-903(a)(c), §18-907(b)** you are sentenced pursuant to Idaho Code § 19-2513 to the custody of the Idaho State Board of Corrections, to be held and incarcerated by said Board in a suitable place for **a fixed term of seven (7) years to be followed by an indeterminate term of eight (8) years for a total unified sentence not to exceed fifteen (15) years.**

IT IS FURTHER ORDERED that judgment and sentence on all counts shall run concurrent.

IT IS FURTHER ORDERED that you shall receive credit for time served.

Defendant is remanded to the custody of the Department of Corrections commencing December 4, 2006.

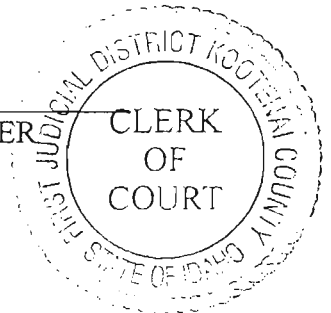
NOTICE OF RIGHT TO APPEAL

YOU, JONATHAN WADE ELLINGTON, ARE HEREBY NOTIFIED that you have a right to appeal this to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have any questions concerning your right to appeal, you should consult your present lawyer.

ENTERED this 11th day of December, 2006.


JOHN PATRICK LUSTER
District Judge



CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 14 day of December, 2006, copies of the foregoing Judgment and Sentencing Disposition were mailed, postage prepaid, faxed, or sent by interoffice mail to:

✓ Art Verheyen, Deputy Prosecuting Attorney for Kootenai County 446-1831
✓ Ann Taylor, Defense Attorney 446-1701
Defendant, _____, c/o KCSO
✓ Idaho Department of Correction (via fax 208 327-7445)
Probation & Parole
✓ Kootenai County Sheriff's Department + 2 copies DJPSI
Idaho Dept. of Transportation (via fax 208-334-8739)
Information Systems Department, Idaho Supreme Court, Supreme Court Building,
W. 451 State Street, Boise, ID 83720
Department of Corrections
Central Records
Idaho Department of Corrections
1299 N. Orchard Suite 110
Boise, ID 83706
(FAX) 1(208) 327-7444 or 7445

DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT

By Barbara Parkins
Deputy Clerk

 **ORIGINAL**


STATE OF IDAHO
COUNTY OF KOOTENAI
FILED
AT 9/4/4 O'CLOCK P.M.
CLERK, DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	Case No. CR-F06-1497
)	
Plaintiff,	)	ORDER TO
	)	RELEASE EXHIBITS
vs.)	
)	
JONATHAN W. ELLINGTON,)	
)	
Defendant.)	

The Court having before it the State's motion, and good cause appearing now, therefore;
IT IS HEREBY ORDERED that the firearm entered at the jury trial, and the same hereby
are, released to the Prosecutor's office.

ENTERED this 19th day of December, 2006.


JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Dec, 2006, that a true and correct copy of
the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand

Delivered, or Faxed to:
Prosecutor 446-1833
KCPSB _____
Bonding Co. _____

Defense Attorney 446-1701 Defendant _____
Auditor _____ Police Agency _____
Other Saites 446-1766

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY: , Deputy

ORDER TO RELEASE EXHIBITS



ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED 12/19/06
AT 11:42 O'CLOCK
CLERK DISTRICT COURT
DEPT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CR-F06-1497
)	
Plaintiff,	)	ORDER TO
	)	RELEASE EXHIBITS
vs.)	
)	
JONATHAN W. ELLINGTON,)	
)	
Defendant.)	

The Court having before it the State's motion, and good cause appearing now, therefore;
IT IS HEREBY ORDERED that the firearm entered at the jury trial, and the same hereby
are, released to the Prosecutor's office.

ENTERED this 19th day of December, 2006.

JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Dec., 2006, that a true and correct copy of
the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand
Delivered, or Faxed to:
Prosecutor 446-1833 Defense Attorney 446-1701 Defendant _____
KCPSB _____ Auditor _____ Police Agency _____
Bonding Co. _____ Other Dailings 446-1766

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT
BY: , Deputy

ORDER TO RELEASE EXHIBITS

Released to
12/21/06
Susan Wintert

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2007 JAN -4 PM 2:44

CLERK DISTRICT COURT
[Signature]
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff/
Respondent,

V.

JONATHAN W. ELLINGTON,

Defendant/
Appellant.

CASE NUMBER CR-06-0001497
Fel

NOTICE OF APPEAL

**TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE
CLERK OF THE ABOVE ENTITLED COURT:**

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the Idaho Supreme Court from the final Judgment and Sentence entered in the above entitled matter on December 4, 2006, the Honorable John P. Luster, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c)(1).
3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

- A. Denial of Pre-Trial Motion to Dismiss
- B. Denial of Motion to Continue Trial
- C. Denial of Pre-Trial Order for Prosecuting Attorney to produce Reports from Expert Witness Sean Daly and Expert/"Rebuttal" Witness Fred Rice
- D. Admitting the Testimony of Eric Hartman (RMIN)
- E. Admitting the Testimony of Dr. Marco Ross
- F. Denial of Defense Motion to Exclude testimony of Fred Rice
- G. Denial of Motion to declare a Mistrial on each of the times the Motion was made by the Defense
- H. Denial of Rule 29 Motion at the conclusion of the State's Case in Chief
- I. Denial of Defendant's requested Jury Instructions
- J. Improper Jury Instructions
- K. Fundamental Error in Prosecutor Verharen's Closing Argument
- L. Abuse of Discretion in Sentence as excessive

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

All Recorded Proceedings

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: All pre-trial filings; jury instructions and copies of exhibits offered and admitted into evidence.

6. I hereby certify as follows:

- A. A copy of this Notice of Appeal has been served upon the court reporter.
- B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.
- C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.
- D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.
- E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the Kootenai County Prosecuting Attorney, and the Attorney General of Idaho pursuant to Section 67-1401 (1) Idaho Code.

DATED this 4 day of January 2007.

OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

BY:



ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of January, 2007 served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

<u> X </u>	Kootenai County Prosecuting Attorney P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	via Interoffice Mail
<u> X </u>	Molly J. Huskey State Appellate Public Defender 3647 Lake Harbor Lane Boise, Idaho 83703	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 334-2985
<u> X </u>	Lawrence G. Wasden Attorney General P.O.Box 83720 Boise, Idaho 83720-0010	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 334-2530
<u> </u>	Reporter for District Judge John T. Mitchell, Julie Foland via Interoffice Mail	
<u> </u>	Reporter for District Judge Fred M. Gibler, Byrl R. Cinnamon via Interoffice Mail	
<u> X </u>	Reporter for District Judge John P. Luster, William A. Rush via Interoffice Mail	
<u> </u>	Reporter for District Judge Charles W. Hosack, JoAnn Schaller via Interoffice Mail	

Lisa Beeler

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

2007 JAN -4 PM 2:44

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

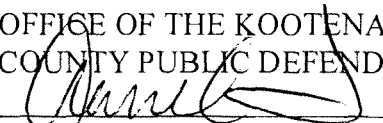
CASE NUMBER CR-06-0001497
Fel

**MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC DEFENDER
IN DIRECT APPEAL; RETAINING TRIAL
COUNSEL FOR RESIDUAL PURPOSES**

COMES NOW, the above named defendant, by and through his attorney, Anne Taylor, Deputy Public Defender and hereby moves the Court for an Order pursuant to Idaho Code §19-867, et seq., and Rule 13(b), (12) and (19) for its order appointing the State Appellate Public Defender's Office to represent the Appellant in all further proceedings. This motion is brought on the grounds and for the reasons that the Defendant is currently being represented by the Office of the Public Defender, Kootenai County; the State Appellate Public Defender is authorized by statute to represent the Defendant in all felony appellate proceedings; and it is in the interest of justice, for them to do so in this case since the Defendant is indigent, and any further proceedings on this case will be appealed.

DATED this 4 day of January, 2007.

BY:

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

**MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER
IN DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of January, 2007, served a true and correct copy of the attached MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER via interoffice mail or as otherwise indicated upon the parties as follows:

<u> X </u>	Kootenai County Prosecuting Attorney P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	via Interoffice Mail
<u> X </u>	State Appellate Public Defender 3647 Lake Harbor Lane Boise, Idaho 83703	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 334-2985
<u> X </u>	Lawrence G. Wasden Attorney General P.O.Box 83720 Boise, Idaho 83720-0010	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 334-2530
<u> </u>	Reporter for District Judge John T. Mitchell, Julie Foland via Interoffice Mail	
<u> </u>	Reporter for District Judge Fred M. Gibler, Byrl R. Cinnamon via Interoffice Mail	
<u> X </u>	Reporter for District Judge John P. Luster, William A. Rush via Interoffice Mail	
<u> </u>	Reporter for District Judge Charles W. Hosack, JoAnn Schaller via Interoffice Mail	

Lisa Baer

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, ID 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO } SS
COUNTY OF KOOTENAI
FILED 11/15/06
AT 11:50 O'CLOCK A.M.
CLERK, DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497
Felony

**ORDER FOR APPOINTMENT OF STATE
APPELLATE PUBLIC DEFENDER IN
DIRECT APPEAL; RETAINING TRIAL
COUNSEL FOR RESIDUAL PURPOSES**

TO: OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER, AND, ANNE
TAYLOR, DEPUTY PUBLIC DEFENDER, KOOTENAI COUNTY.

A judgment having been entered by this Court on December 4, 2006, and the defendant having requested the aid of counsel in pursuing a direct appeal from this district court in this felony matter, and defendant's trial counsel having filed a timely notice of appeal, and the Court being satisfied that said defendant continues to be a needy person entitled to public representation, therefore,

IT IS HEREBY ORDERED, in accordance with I.C. 19-870, that the State Appellate Public Defender is appointed to represent defendant in all further proceedings involving his appeal.

IT IS FURTHER ORDERED that trial counsel shall remain as appointed counsel of record

ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER IN
DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES

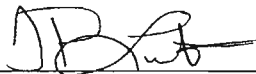
-1-

438

for all other matters involving action in the trial court which, if resulting in an order in defendant's favor, could affect the judgment, order or sentencing in the action, until the expiration of the time limit for filing said motions or, if sought and denied, upon the expiration of the time for appeal of such ruling with the responsibility to decide whether or not a further appeal will be taken in such matters.

IT IS FURTHER ORDERED that trial counsel shall cooperate with the Office of State Appellate Public Defender in the prosecution of defendant's appeal.

DATED this 12th day of January, 2007.



JOHN P. LUSTER
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16 day of Jan-2007 ~~May, 2003~~, served a true and correct copy of the attached ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER via facsimile, interoffice mail or as otherwise indicated upon the parties as follows:

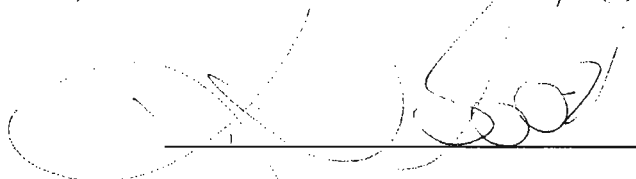
<u> X </u>	Kootenai County Public Defender	<input type="checkbox"/>	Interoffice Mail
		<input checked="" type="checkbox"/>	Facsimile(208) 446-1701
<u> X </u>	Kootenai County Prosecuting Attorney	<input type="checkbox"/>	Interoffice Mail
		<input checked="" type="checkbox"/>	Facsimile (208) 446-1833
<u> X </u>	State Appellate Public Defender	<input type="checkbox"/>	First Class Mail
	3647 Lake Harbor Lane	<input type="checkbox"/>	Certified Mail
	Boise, Idaho 83703	<input checked="" type="checkbox"/>	Facsimile (208) 334-2985
<u> X </u>	Lawrence G. Wasden	<input type="checkbox"/>	First Class Mail
	Attorney General	<input type="checkbox"/>	Certified Mail
	P.O. Box 83720	<input checked="" type="checkbox"/>	Facsimile (208) 334-2530
	Boise, Idaho 83720-0010		

Supreme Court (certified)

[] First Class Mail
[x] Fax Certified (208) 334-2616

1

Reporter for District Judge John P. Luster, William A. Rush via Interoffice Mail *c/o Chris*



MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2007 MAR -2 PM 3:32

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JONATHAN W. ELLINGTON,

Defendant-Appellant.

CASE NO. CR 2006-0001497

S.C. DOCKET NO. 33843

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND
THE PARTY'S ATTORNEYS, BILL DOUGLAS, KOOTENAI COUNTY
PROSECUTOR, P.O. BOX 9000, 500 GOVERNMENT WAY, COEUR D'ALENE,
ID 83816-9000, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Judgment and Sentence entered in the above-entitled action on the 14th day of December, 2006, the Honorable John P. Luster, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, are:

- (a) Did the district court err by denying appellant's Pre-Trial Motion to Dismiss?
- (b) Did the district court err by denying appellant's Motion to Continue Trial?
- (c) Did the district court err by denying appellant's Pre-Trial Order for Prosecuting Attorney to produce Reports from Expert Witness Sean Daly and Expert/"Rebuttal" Witness Fred Rice?
- (d) Did the district court err by admitting the Testimony of Eric Hartman (RMIN)?
- (e) Did the district court err by admitting the Testimony of Dr. Marco Ross?
- (f) Did the district court err by denying appellant's Motion to Exclude Testimony of Fred Rice?
- (g) Did the district court err by denying appellant's motion to declare a mistrial on each of the times the motion was made?
- (h) Did the district court err by denying appellant's Rule 29 Motion at the conclusion of the State's Case in Chief?
- (i) Did the district court err by denying appellant's requested Jury Instructions?
- (j) Did the district court err by improperly instructing the jury?

- (k) Did the State commit fundamental Error during closing argument?
- (l) Did the district court abuse its discretion by imposing an excessive sentence?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report (PSI).

5. The appellant requests the preparation of the entire reporter's standard transcript as defined in I.A.R. 25(a). The appellant also requests the preparation of the following portions of the reporter's transcript:

- (a) ~~All Recorded Proceedings~~;
- (b) Preliminary Hearing held on January 31, 2006;
- (c) Preliminary Hearing held on February 10, 2006;
- (d) Preliminary Hearing held on February 15, 2006, (lodged May 9, 2006);
- (e) Preliminary Hearing held on February 16, 2006;
- (f) Motion for Extension to File Pre-Trial Motions Hearing held on April 20, 2006;
- (g) Motion for Jury to View Scene Hearing held on May 5, 2006;
- (h) Motion to Dismiss Hearing held on May 31, 2006;
- (i) Motion to Continue Hearing held on July 21, 2006;
- (j) Pretrial Conference held on August 10, 2006;
- (k) Motion Hearing held on August 21, 2006;

- (l) Jury Trial held August 22, 2006, through September 7, 2006, to include the opening statements, closing statements, jury instruction conferences and orally presented jury instructions; and
- (m) Sentencing Hearing held on December 4, 2006.

6. The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) All proposed or given jury instructions including, but not limited to, Plaintiff's Requested Jury Instructions filed August 10, 2006, and Jury Instructions (Given) filed September 21, 2006;
- (b) Any exhibits, including but not limited to, letters or victim impact statements, addendums to the PSI or other items offered at the sentencing hearing including, but not limited to, the PSI Attachments filed October 25, 2006, and November 14, 2006;
- (c) Affidavit of Probable Cause filed January 27, 2006;
- (d) Memorandum Re: Implied Malice lodged February 15, 2006;
- (e) Citations in Support of Memorandum Re: Implied Malice filed February 15, 2006;
- (f) Authority and Argument in Support of Motion to Dismiss filed May 30, 2006;
- (g) Notice of Filing Letter from Skelton Engineering filed August 10, 2006;

Exhibit (e)

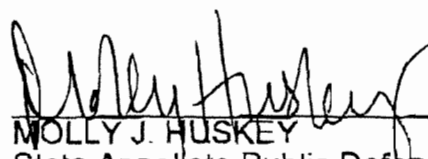
- (h) Notice of Filing Under Seal: Accompanying Document Re: Consultation was not attached to Notice of Filing filed August 10, 2006;
- (i) Records from Dr. Patrick Mullen filed August 18, 2006;
- (j) Plaintiff's Sentencing Materials filed November 28, 2006, and November 29, 2006;
- (k) Letters from Victim's Friends filed November 29, 2006; and
- (l) Objection to Motion to Release Plaintiff's Exhibits filed December 11, 2006.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the reporter;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Kootenai County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and

(e) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 2nd day of March, 2007.


MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 2nd day of March, 2007, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

JONATHAN W ELLINGTON
INMATE # 83305
IDAHO MAXIMUM SECURITY INSTITUTION E BLOCK
PO BOX 51
BOISE ID 83707

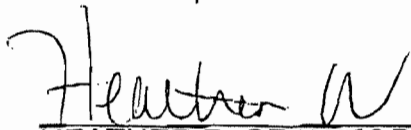
ANNE C TAYLOR
KOOTENAI COUNTY PUBLIC DEFENDERS OFFICE
400 NORTHWEST BLVD
PO BOX 9000
COEUR D ALENE ID 83816 9000

WILLIAM A RUSH
501 GOVERNMENT WAY
PO BOX 9000
COEUR D ALENE ID 83816 9000

BILL DOUGLAS
KOOTENAI COUNTY PROSECUTORS OFFICE
PO BOX 9000
500 GOVERNMENT WAY
COEUR D ALENE ID 83816 9000

CLERK OF THE COURT
IDAHO STATE SUPREME COURT
PO BOX 83720
BOISE ID 83720 0101
HAND DELIVER

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court


HEATHER R. CRAWFORD
Administrative Assistant

MJH/TMF/SBT/hrc

ORIGINAL

Anne C. Taylor, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 5836

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED

2007 MAR 28 PM 2:35

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

JONATHAN W. ELLINGTON,

Defendant.

CASE NUMBER CR-06-0001497

MOTION FOR RECONSIDERATION
OF SENTENCE PURSUANT TO
I.C.R. 35

COMES NOW the above named defendant by and through his attorney, Anne Taylor, Deputy Public Defender, and pursuant to Idaho Criminal Rule 35 requests the Court to reconsider the Judgment and Sentence entered herein December 4, 2006. This motion is made as a plea for leniency.

Counsel requests a hearing be scheduled in order to present oral argument and/or testimony in support of the foregoing motion. Requested time is 30 minutes.

DATED this 28 day of March, 2007.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


ANNE TAYLOR
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 28th day of March, 2007, addressed to:

Kootenai County Prosecutor

_____

ORDER GRANTING MOTION FOR JUDICIAL NOTICE -- Docket No. 33843-2007

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO
Plaintiff/Respondent

VS.

JONATHAN W. ELLINGTON
Defendant/appellant

SUPREME COURT # 33843
CASE NUMBER CR 06-1497

CLERK'S CERTIFICATE

I, May Moreland, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I further certify that the following will be submitted as exhibits to this Record on Appeal:

PLAINTIFF'S EXHIBITS:

Citations in Support of Memorandum re: Implied Malice 2/15/06
TRANSCRIPT: Preliminary Hearing 2/10,15,16/06
Plaintiff's Requested Jury Instructions 8/10/06
Photos: #1 – 39, 45 – 81, 85 – 96, 100 – 133: 8/28/06
Defendant's Requested Jury Instructions 9/21/06
Jury Instructions (Given) 9/21/06
Presentence Report dated 10/18/06
Presentence Addendum dated 10/24/06
Presentence Addendum dated 11/14/06
#147: Video tape 8/30/06
#148: Mini Cassette 8/30/06
149A: Shell casings 8/30/06
#150: Statement form: 8/23/06
#151 & #152: CD's
#153: Statement form 8/23/06

DEFENDANT'S EXHIBIT

PHOTOS: # A - # M (Except #K
#K: CD 8/31/06
#BB: Cassette Tape (not given t
the Jury) 9/1/06
#CC, DD, EE, FF: Charts 9/5/06
#GG: CD 9/5/06

COURT'S EXHIBIT:

#A: Notice or Tort Claim
(dated 5/16/06)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 1st Day of March, 2007.

CLERK OF DISTRICT COURT
DAN ENGLISH

by: 
Deputy Clerk

CLERK'S CERTIFICATE

In the Supreme Court of the State of Idaho

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,	)	ORDER GRANTING MOTION TO
	)	AUGMENT RECORD
v.)	
	)	Supreme Court Docket No. 33843-2007
JONATHAN W. ELLINGTON,	)	Kootenai County District Court No.
	)	2006-1497
Defendant-Appellant.	)	Ref. No. 09-619

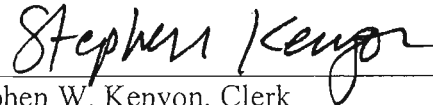
A MOTION TO AUGMENT RECORD with attachments and AFFIDAVIT of Erik R. Lehtinen were filed by counsel for Appellant on November 13, 2009, requesting this Court for an Order augmenting this Record on Appeal with copies of documents attached to this Motion. Counsel for Appellant further advises that although none of the requested items for augmentation bears a file stamp from the district court (as is technically required by Rule 30(a)), Appellant nevertheless contends that these documents were filed with, and considered by, the district court and therefore, they can be, and should be, augmented into the Record on Appeal. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, copies of which accompanied this Motion, as EXHIBITS:

1. Defendant's Exhibit A (Transcript of a portion of the trial in *State v. Ciccone*—believed to have been filed on October 17, 2008);
2. Defendant's Exhibit B (preliminary hearing transcript from *State v. Ciccone*—believed to have been filed on October 17, 2008);
3. Memorandum in Support of Motion for New Trial (believed to have been filed on October 17, 2008);
4. Brief in Opposition to Motion for New Trial (believed to have been filed on October 17, 2008);
5. Notice of Filing in Support of Defendant's Motion for New Trial (believed to have been filed on December 22, 2008);
6. Defendant's Exhibit C (Affidavit of William H. Skelton, Jr.—believed to have been filed on December 22, 2008);
7. Defendant's Exhibit D (accident reconstruction training materials—believed to have been filed on December 22, 2008).

DATED this 10 day of December 2009.

By Order of the Supreme Court



Stephen W. Kenyon, Clerk

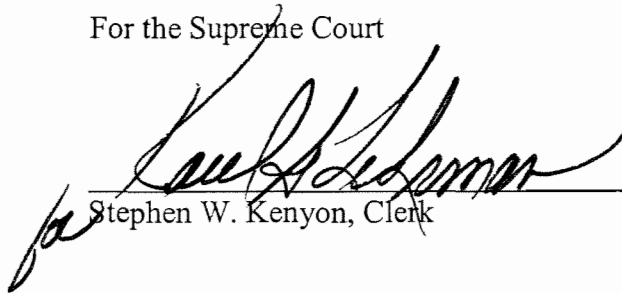
cc: Counsel of Record

ORDER GRANTING MOTION TO AUGMENT RECORD – Docket No. 33843

14. Transcript of Preliminary Hearing Held January 17 and 24, 2006, Volume 3 of 4, *State v. Ellington*, Kootenai County Case No. CR-F06-0033 (Mar. 24, 2006); and
15. Transcript of Preliminary Hearing Held January 17 and 24, 2006, Volume 4 of 4, *State v. Ellington*, Kootenai County Case No. CR-F06-0033 (Mar. 24, 2006).

DATED this 21st day of February 2008.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho
Paintiff/Respondent

SUPREME COURT # 33843
CASE #: CR 06-1497

VS.

CERTIFICATE OF SERVICE

JONATHAN W. ELLINGTON
Defendant/Appellant

I, May Moreland, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the Clerk's Record to each of the attorneys of record in this cause as follows:

Ms. Molly Huskey
State Appellate
Public Defender
P.O. Box 83720
Boise ID 83720-0005

Attorney for Appellant

Mr. Lawrence Wasden
Attorney General
State of Idaho
700 W. Jefferson # 210
Boise ID 83720-0010

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 11th Day of April, 2007.

Dan English
Clerk of District Court

By 
May Moreland, Deputy Clerk

CERTIFICATE OF SERVICE